RAILROAD IMPROVEMENT ACT OF 1977

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1793

TO MAKE AMENDMENTS TO CERTAIN LAWS REGARDING RAILROADS, AND FOR OTHER PURPOSES

JULY 25 AND 29, 1977

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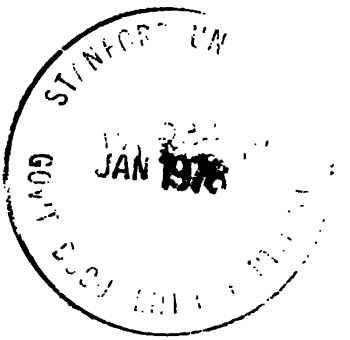

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RAILROAD IMPROVEMENT ACT OF 1977

MONDAY, JULY 25, 1977

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 9:50 a.m. in room 5110, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the subcommittee) presiding.

Senator LONG. Please pardon me for appearing late in starting this hearing. My schedule said I was supposed to start this hearing at 10 o'clock. So I am between the hour I was supposed to be here and the hour the schedule said.

We are pleased to have your statement, Senator.

We are beginning our hearings today to examine the effectiveness of the Rail Revitalization Regulatory Act. And I will include a statement I have prepared on this.

[The bill and agency comments follow:]

95TH CONGRESS
1ST SESSION

S. 1793

IN THE SENATE OF THE UNITED STATES

JUNE 30 (legislative day, MAY 18), 1977

Mr. LONG (for himself, Mr. MAGNUSON, and Mr. STEVENSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To make amendments to certain laws regarding railroads, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Railroad Improvement Act of 1977".

AMENDMENTS TO THE DEPARTMENT OF TRANSPORTATION ACT

SEC. 2. (a) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) is amended as follows:

(1) Amend the first sentence thereof to read as follows: "The Federal share of the costs of any rail service

assistance program shall be as follows: (1) 100 percent for the period from July 1, 1976 to June 30, 1977; (2) 90 percent for the period from July 1, 1977 to September 30, 1978; (3) 80 percent for the period from October 1, 1978 to September 30, 1979; and (4) 70 percent for the period from October 1, 1979 to September 30, 1981.".

(2) Amend the second sentence thereof by striking out "July 1, 1979 to June 30, 1981," and inserting in lieu thereof "October 1, 1979 to September 30, 1981,".

(3) Add at the end thereof the following: "In-kind benefits which a State provides for any period in excess of that State's share of project costs for that particular period shall be applied toward that State's share in any subsequent period. The date of initiation of any maintenance, rehabilitation, improvement, or acquisition project shall establish the period from which rail freight assistance to which a State is entitled shall be provided. Whenever the costs of an approved maintenance, rehabilitation, improvement, or acquisition project exceed the amount of rail freight service assistance to which a State is entitled for the period in which such project is initiated, the Secretary is authorized to provide assistance in any subsequent period to cover the costs of such project. Such assistance shall be provided for such subsequent period at the percentage level of the Federal

share for that particular period as established by this subsection.".

(b) Subsection 5(h) of the Department of Transportation Act (49 U.S.C. 1654(h)) is amended to read as follows:

"(h) Each State which is, pursuant to subsection (j) of this section, eligible to receive rail service assistance is entitled to an amount equal to the total amount authorized and appropriated for such purposes, multiplied by a fraction whose numerator is the sum of the rail mileage in such State (1) for which the Commission has found that the public convenience and necessity permit the abandonment of, or the discontinuance of, rail service on the line of railroad; (2) which was eligible for assistance under title IV of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 761–763); (3) which is identified as 'potentially subject to abandonment' or as a line for which a carrier plans to submit an application for a certificate of abandonment or discontinuance as those terms are used in section 1a(5)(a) of the Interstate Commerce Act (49 U.S.C. 1a(5)(a)); and (4) lines for which an abandonment or discontinuance application is pending before the Commission; and whose denominator is the sum of all such rail mileages in all of the States which are eligible for rail service assistance under

this section, except that the mileage of any line or portion of line of railroad shall not be included more than once in the calculation of the numerator of the fraction.".

(c) Section 5(k)(1) of the Department of Transportation Act (49 U.S.C. 1654(k)(1)) is amended by adding before the semicolon at the end of clause (B) thereof the following: ", or (C) the revenues attributable to the line of railroad which is related to such project are less than the sum of (1) the avoidable costs of providing rail service on such properties".

(d) Section 5(k) of the Department of Transportation Act (49 U.S.C. 1654(k)), as amended by this Act, is further amended by (a) deleting the word "and" at the end of paragraph (1); (b) renumbering paragraph (2) as paragraph (3); and (c) inserting immediately after the end of paragraph (1) the following new paragraph:

"(2) the line of railroad which is related to the project is identified as 'potentially subject to abandonment' or as a line for which a carrier plans to submit an application for a certificate of abandonment or discontinuance as those terms are used in section 1a(5)(a) of the Interstate Commerce Act or is a line for which an abandonment or discontinuance application is pending before the Commission, in which case, the eligibility for financial assistance shall be limited to projects which

have as their principal objectives the elimination of deferred maintenance and the rehabilitation of such rail line, with such line being ineligible for rail service continuation assistance unless and until such line becomes eligible pursuant to paragraph (1) of this subsection; and".

(c) Section 5(l) of the Department of Transportation Act (49 U.S.C. 1654(l)) is amended by adding at the end thereof the following: "The authorization of the appropriation of Federal funds or their availability for expenditure for the purpose of subsections (f) through (o) of this section shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. The Secretary shall not withhold approval of a State rail freight program or project solely on the grounds that the State initiated the program or project without the prior approval of the Secretary. The provisions of subsections (f) through (o) of this section provide for a federally assisted State program.".

(f) Section 5 of the Department of Transportation Act (49 U.S.C. 1654) is amended (1) by redesignating subsections (n) and (o) thereof as subsections (p) and (q); and (2) by adding the following new subsection:

"(n) No funds received by a State pursuant to this section may be used to make a rail service continuation

payment for a project solely eligible pursuant to clause (k) (1) (C) of this section unless (1) the railroad providing service on such line makes a cooperative assistance proposal to the State whereby it proposes not to apply to abandon or discontinue service on such line if within 90 days it receives an offer from the State of a rail service continuation payment covering 90 per centum of the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line; and (2) the State makes such an offer within 90 days of its receipt of such proposal. Notwithstanding any other provision of this Act, a State, in accordance with procedures approved by the Secretary may, as a condition of making a rail continuation payment pursuant to this subsection, require that 10 per centum of the non-Federal sharing such payment be paid by a shipper, a local government or other responsible person other than an agency of the United States.".

(g) The second sentence of section 5 (o) of section 5 of the Department of Transportation Act (49 U.S.C. 1654 (o)) is amended to read as follows: "Of the foregoing sums, not to exceed $10,000,000 shall be made available for planning grants during each of the five fiscal years ending

June 30, 1976; September 30, 1977; September 30, 1978; September 30, 1979; and September 30, 1980.".

AMENDMENTS TO THE RAIL PASSENGER SERVICE ACT

SEC. 3. (a) The third sentence of section 303 (d) of the Rail Passenger Service Act (45 U.S.C. 543 (d)) is amended (a) by inserting immediately after "president" the following: "and one other officer"; and (b) by striking out "with respect to such officer" and inserting in lieu thereof "with respect to such officers".

(b) The third sentence of section 402 (a) of the Rail Passenger Service Act (45 U.S.C. 562 (a)) is amended to read as follows: "In fixing just and reasonable compensation for the provision of services ordered by the Commission under the preceding sentence, the Commission shall, in fixing all compensation in excess of incremental costs, consider quality of service as a major factor in determining the amount (if any) of such compensation, including reasonable adherence to the fastest practicable operations schedule.".

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

SEC. 4. (a) Section 102 (16) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 702 (16)) is amended by striking out ", in his absence, the Deputy

Secretary of Transportation" and inserting in lieu thereof "the duly authorized representative of either of them".

(b) Section 201 (d) (2) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711) is amended by striking out "the Deputy Secretary of Transportation, the Vice Chairman of the Commission, or the Deputy Secretary of the Treasury, as the case may be", and inserting in lieu thereof "their duly authorized representatives".

(c) Section 201 (h) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711 (h)) is amended by adding a new sentence at the end thereof as follows: "The Secretary and the Chairman of the Commission may act in such capacity directly or at any time through their duly authorized representatives.".

(d) Section 201 (i) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711 (i)) is amended by striking out "Deputy Secretaries" and inserting in lieu thereof "duly authorized representatives".

(e) Section 201 (j) (4) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711 (j) (4)) is amended (1) by striking out "or, in his absence, the Deputy Secretary of the Treasury" and inserting in lieu thereof ", or the duly authorized representative of either of them"; and (2) by adding immediately before the period at the end thereof, ", or the duly authorized representative of either of them".

(f) Section 303 (b) (6) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 743 (b) (6)) is amended—

(1) by redesignating such paragraph (6) as paragraph (6) (A), and by redesignating clauses (A) and (B) in the first sentence thereof as clauses (i) and (ii), respectively; and

(2) by adding at the end thereof the following new subparagraph:

"(B) The Corporation shall make such premium payments as are necessary to maintain in effect all insurance policies providing medical or life insurance benefits to persons described in section 211 (h) (1) (A) (viii) of this Act, and shall be entitled to a loan pursuant to section 211 (h) of this Act in an amount required for such premium payments. For purposes of such section 211 (h) and notwithstanding any other provision of Federal or State law, amounts required for such premium payments shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization.".

(g) The first sentence of section 402 (b) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762 (b)) is amended to read as follows:

"(b) ENTITLEMENT.—(1) Each State in the region which is, pursuant to subsection (c) of this section, eligible

to receive rail service continuation assistance is entitled to the total amount authorized and appropriated for such purpose multiplied by a fraction whose numerator is the sum of the rail mileage in such State which are (A) those rail services of railroads in reorganization in the region, or persons leased, operated, or controlled by any such railroad, which the Final System Plan does not designate to be continued; (B) those rail services on rail properties referred to in section 304(a)(2) of this Act; (C) those rail services in the region which have been, at any time during the 5-year period prior to the date of enactment of this Act, or which are, subsequent to the date of enactment of this Act, owned, leased, or operated by a State agency or by a local or regional transportation authority, or with respect to which a State, a political subdivision thereof, or a local or regional transportation authority has invested (at any time during the 5-year period prior to the date of enactment of this Act), or invests (subsequent to the date of enactment of this Act), substantial sums for improvement or maintenance of rail service; (D) those rail services in the region with respect to which the Commission authorizes the discontinuance of rail services or the abandonment of rail properties, effective on or after the date of enactment of this Act; (E) those rail services which are identified as 'potentially subject to abandonment' or as lines for which a carrier plans to submit an

application for a certificate of abandonment or discontinuance as those terms are used in section 1a(5) (a) of the Interstate Commerce Act; and (F) lines for which an abandonment or discontinuance application is pending before the Commission; and whose denominator is the sum of all such rail mileages in all of the States which are eligible for rail service assistance under this section, except that the mileage of any line or portion of line of railroad shall not be included more than once in the calculation of the numerator of the fraction."

(h) Paragraph (2) of section 402(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)(2)) is amended by (a) deleting "or" at the end of subparagraph (C); (b) deleting the period at the end of subparagraph (D), and inserting in lieu thereof "; or"; and (c) inserting immediately after such subparagraph (D) the following:

"(E) those rail services which are identified as 'potentially subject to abandonment' or as lines for which a carrier plans to submit an application for a certificate of abandonment of discontinuance as those terms are used in section 1a(5) (a) of the Interstate Commerce Act or those lines for which an abandonment or discontinuance application is pending before the Commission; in which case, the eligibility for financial assistance shall be limited to projects which have as their prin-

cipal objectives the elimination of deferred maintenance and the rehabilitation of such rail line, with such rail line being ineligible for rail service continuation assistance unless and until such line becomes eligible pursuant to subparagraph (B), (C), or (D) of this subsection.".

(i) Section 402(c) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(c)), as amended by this Act, is further amended by adding at the end thereof the following new paragraph:

"(6) Two or more States that are eligible for local rail assistance under this subsection may, subject to agreement between or among them, combine their respective Federal entitlements under subsection (b) of this section in order to improve rail properties within their respective States or regions. Such combination of entitlements, where not violative of State law, shall be permitted, except that—

"(A) combined funds may be expended only for purposes listed in this section; and

"(B) combined funds that are expended in one State subject to the agreement entered into by the involved States, and which exceed what that State could have expended absent any agreement, must be found by the Secretary to provide benefits to eligible freight services within one or more of the other States which is party to the agreement.".

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AMENDMENTS TO THE INTERSTATE COMMERCE ACT

SEC. 5. (a) Section 1a of the Interstate Commerce Act (49 U.S.C. 1a) is amended (1) by renumbering paragraph (10) thereof as paragraph (11); and (2) by adding the following new subparagraph:

"(10) Notwithstanding any other provision of this section, if, (a) within ninety days of receiving a cooperative assistance proposal pursuant to section 5(n) of title V of the Department of Transportation Act (49 U.S.C. 1654 (n)), a State had not offered financial assistance (in the form of a rail service continuation payment) which shall cover 90 per centum of the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or (b) an applicable rail service continuation payment to be made pursuant to such section 5(n) is not paid when it is due, the Commission (within thirty days of receipt of an application to discontinue service on such line), upon finding (i) such a cooperative assistance proposal has been made, and that such valid financial assistance offer was made or (ii) that such payments have not been made, shall find that the public convenience and necessity permit the abandonment or discontinuance of such line of railroad.".

(b) Paragraph (3) of section 20 of the Interstate Com-

merce Act (49 U.S.C. 20(3)) is amended to read as follows:

"(3) (a) The Commission shall issue regulations and procedures prescribing a uniform accounting and reporting system to the Commission for all common carriers by railroad subject to this part. This accounting and reporting system shall be in accordance with generally accepted financial accounting principles uniformly applied to all common carriers by railroad subject to this part, and all accounting and reporting to the Commission reports shall include any disclosure considered appropriate under generally accepted financial accounting principles or the requirements of the Commission or of the Securities and Exchange Commission.

"(b) In order that the Commission shall be able to determine rail carriers' costs relevant to its responsibilities to establish fair and reasonable rates and for other regulatory areas of responsibility such as control of abandonment, the Commission shall define and require the accurate reporting of expenses for materials, labor, overhead, administration and other activities in a prescribed format that will permit the Commission to determine total and variable costs associated with any functional activity of a carrier, including maintenance-of-way, maintenance of equipment (locomotive and car), transportation (train, yard and station, and accessorial services) and general administration.

"(c) The Commission shall, notwithstanding any other provision of this section, to the extent possible devise the accounting and reporting system to be cost effective, non-duplicative, and compatible with the present and desired managerial and responsibility accounting requirements of the carriers, and to give due consideration to appropriate economic principles. The Commission should attempt, to the extent possible, to require that such data be reported or otherwise disclosed only for essential regulatory purposes, including rate change requests, abandonment of facilities requests, responsibility for peaks in demand, cost of service, and issuance of securities.

"(d) In order that the accounting and reporting system to the Commission established pursuant to this paragraph continue to conform to generally accepted accounting principles, compatible with the managerial responsibility accounting requirements of carriers, and in compliance with other objectives set forth in this section, the Commission shall periodically, but not less than once every 5 years, review such reporting and revise it as necessary.".

"(e) There are authorized to be appropriated to the Commission for purposes of carrying out the provisions of this paragraph such sums as may be necessary, not to exceed $1,000,000, to be available for—

"(i) procuring temporary and intermittent services

as authorized by section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed $250 per day plus expenses; and

"(ii) entering to contracts or cooperative agreements with any public agency or instrumentality or with any person, firm, association, corporation, or institution, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).".

AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

SEC. 6. (a) In section 703(1)(A)(i) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(A)(i)), immediately after "operating on" wherever it appears, insert the following: "at least".

(b) Section 703(1)(B) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(B)) is amended by striking out the last sentence.

(c) Section 703 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853) is amended by adding at the end thereof the following new subparagraph:

"(5) COMPATIBLE EQUIPMENT.—The development of equipment designed to be compatible with the track, operating, and characteristics of the travel market of the Northeast corridor. The Secretary, in consultation with the

National Railroad Passenger Corporation, shall develop appropriate economical and reliable equipment for purchase for use particularly in the Northeast corridor and which will respond effectively to the intercity travel needs of Northeast corridor and will facilitate the offering of various levels of service. The Secretary and the National Railroad Passenger Corporation shall submit needed requests for authorization of appropriations for the production of such equipment and shall include equipment planning in the reports required by subparagraph 703 (1) (E)."

(d) Section 704 (a) (2) of the Railroad Revitalization Reform Act of 1976 (45 U.S.C. 854 (a) (2)) is amended by striking out "$150,000,000" and inserting in lieu thereof "$300,000,000".

(e) The table of contents of the Railroad Revitalization and Regulatory Reform Act of 1976 is amended by adding immediately after

"Sec. 810. Rail bank."

the following new item:

"Sec. 811. Acquisition of abandoned railroad rights-of-way for recreational uses.".

(f) Section 809 (d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 865 (d)) is amended by (a) inserting "(1)" immediately before the first sentence thereof; and (b) adding at the end thereof the following new subparagraph:

"(2) In order to carry out the provisions of subsection (b) (2) of this section, there are hereby authorized to be appropriated to the Secretary of the Interior not to exceed $75,000,000 for the fiscal year ending September 30, 1979. Such sums are authorized to remain available until expended.".

U.S. RAILWAY ASSOCIATION,
Washington, D.C., September 13, 1977.

HON. WARREN G. MAGNUSON,
Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for the opportunity to offer comments on the Railroad Improvement Act of 1977, S. 1793. My comments address two issues: (1) proposed Section 4 thereof dealing with the composition of the USRA Board of Directors and Executive Committee and specifically with representation on both bodies by the Chairman of the ICC; and (2) the necessity for a new paragraph amending Section 209(b) of the Regional Rail Reorganization Act of 1973, as amended (3R Act), to provide for the appointment and compensation of Special Masters to conduct hearings in the valuation case before the Special Court.

With respect to the first issue, current legislation provides for an eleven man Board of Directors and a six member quorum. Moreover, Section 201(d)(2) of the 3R Act provides, in part, that the Chairman of the Interstate Commerce Commission or the Vice Chairman of the Commission shall be a member of the USRA Board of Directors. Section 201(h) provides that the Chairman of the Commission also shall be a member of the Executive Committee.

During recent USRA Board of Director meetings and in testimony before the Senate Subcommittee on Surface Transportation on July 29, 1977, the Chairman of the Interstate Commerce Commission, A. Daniel O'Neal, recommended that existing laws be amended to remove the Chairman of the Interstate Commerce Commission from the membership of the USRA Board. Chairman O'Neal has observed that he must exercise his regulatory responsibilities with respect to the same railroads which have received loans from USRA and which USRA continues to monitor. He therefore must abstain from votes on key issues. USRA supports legislation which would eliminate the conflict-of-interest problem by removing the Chairman of the Commission from membership on the USRA Board.

USRA, accordingly, proposes that Section 4 of S. 1793 be amended to delete references to the Chairman's representation on the USRA Board of Directors and Executive Committee. Instead, USRA proposes the substitution of the Secretary of the Treasury on the Executive Committee. The Secretary of the Treasury is already a member of the USRA Board but with the shift of the Association's activities from planning to monitoring an investment in excess of $2 billion, the role of the Secretary of the Treasury has increased. Also, the quorum requirements should be reduced to five to reflect the smaller Board.

With respect to the second issue, the evolution of the valuation litigation is such as to require the appointment and compensation of Special Masters to hold hearings, receive evidence, and perform other duties as the Special Court may require. Without the Special Masters and administrative support to assist in the performances of their responsibilities, the orderly progress of the valuation case will be jeopardized. The amendment to Section 209(b) gives the Special Court the authority to hire and compensate the Special Masters.

I am attaching USRA's technical amendments to S. 1793 and proposed language providing for the appointment and compensation of Special Masters. I would be pleased to provide additional comments should you require.

Sincerely,

DONALD C. COLE,
President (Acting).

Attachments.

ATTACHMENT A

USRA Amendments to S. 1793 (Indicated by italic)

New Sec. 4(a)(1): Section 201(d) of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 711] is amended by deleting "11" and in lieu thereof inserting "10". Section 201(f) is also amended by deleting "six" and in lieu thereof inserting "five".

Sec. 4(b): Section 201(d) of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 711] is amended:

(1) by striking out in Section 201(d)(2) "three" and in lieu thereof inserting "two" and by striking out "the Chairman of the Commission"; and

(2) [same as Sec. 4(b) of S. 1793].

Sec. 4(c): Section 201(h) of the Regional Rail Reorganization Act of 1973 [45 U.S.C. 711(b)] is amended:

(1) by striking out "Chairman of the Commission" and inserting in lieu thereof "Secretary of the Treasury"; and

(2) by adding a new sentence at the end thereof as follows: "The Secretary of Transportation and the *Secretary of the Treasury* may act in such capacity directly or at any time through their duly authorized representatives."

Section 209(b) of the Regional Rail Reorganization Act of 1973, as amended, is further amended by adding at the end thereof the following:

The Special Court may appoint, fix the compensation and assign the duties of such Masters as it deems necessary or appropriate to conduct hearings, receive evidence and report thereon to the Special Court, and do or perform such acts as the Special Court may require. The Special Court may employ such Masters by contract or otherwise, without regard to Section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), on such terms and conditions as it may determine and such Masters shall not be deemed employees of the Federal Government. The Special Court may also appoint such staff and provide such administrative support as may be necessary for it or the Masters to complete their assignments expeditiously.

There are authorized to be appropriated such funds as are necessary to carry out the purposes of this Act.

Senator LONG. Now we will hear your statement.

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

Senator SARBANES. Thank you very much, Mr. Chairman.

I would like to submit the statement in full for the record and I will summarize it to save some of the subcommittee's time.

I appreciate this opportunity to testify this morning.

Mr. Chairman, your committee has worked diligently over the years to assure that the Nation's railroad system continues to function effectively in support of our industry and commerce. I want to commend the committee for the hearings which you are holding and for your continued concern and oversight with respect to the rail revitalization legislation.

There are a couple of problems I particularly want to bring to the attention of the subcommittee which are important to those States which have substantial rail lines not included within the final

system plan and which face this constant threat of rail service discontinuance.

One is a proposal to authorize two or more States to combine their use of rail service continuation subsidies. The other is to extend the subsidy period and particularly to maintain the 100-percent subsidy for a longer period of time than is now provided under existing legislation.

Both of these proposals are particularly important for Maryland, Delaware, and Virginia, because some of the branch lines were not transferred from the Penn Central to Conrail and are vital to the three-State area, known as the Delmarva Peninsula.

The three States are trying to cooperate closely in rehabilitating the rail lines and I would like to outline two obstacles that they have confronted in this effort.

One is the substantial expense involved in improving the railroad car float at the mouth of the Chesapeake Bay.

We depend on this car float that goes across the mouth of the bay to run our rail system into the Southern States.

Our trunk rail line on this peninsula runs from Wilmington down through the Norfolk area. If we lose that car float, we lose our connection to the Southern States and the only rail system then is one that runs up into Wilmington and greatly cripples our ability to function.

There are some expensive repairs needed to be undertaken on that car float and on the tugs. And the most available source of funds is to transfer the Delaware entitlement for that purpose.

Now, the car float is entirely within the State of Virginia. But it is keyed to the rail system affecting both Maryland and Delaware.

At the present time the law is unclear whether the DOT may undertake such a transfer which all three States have requested of the Secretary of Transportation. They have joined together in doing that.

Now, the bill, S. 1793, does address this problem, Mr. Chairman, by permitting two or more States to combine Federal entitlements which would benefit the States entering into such an agreement.

That is found on page 12 of the committee bill, and I am in very strong support of that provision.

The second obstacle we have encountered deals with the question of the subsidy for rail service assistance to the States under the Regional Rail Reorganization Act of 1973.

The rail subsidy scheme was designed to enable States to continue the rail service on branch lines not included in the final system plan.

It was set at 100 percent and then on a declining basis over a 5-year period.

It is my view that because of the great delay in getting the States rehabilitation programs underway a further extension of 100-percent subsidy is needed and I would like to suggest a 15-month period.

In other words, 1 more year plus the transitional quarter to adjust for the change in the Federal fiscal year.

The delay in the rail rehabilitation effort has resulted in large part because the Federal Railroad Administration required a very extensive project review process of the States as a precondition to the use of the rehabilitation money.

That was particularly severe in Maryland because we have a great number of branch lines on the Delmarva Peninsula which were not included in the final system plan and which need extensive rehabilitation to bring them up to the minimum standards for safe and efficient operation.

The protracted review has delayed this rehabilitation. So we are in a catch-22 situation. You get the subsidy to help you rehabilitate, the rehabilitation will enable you to cut operating costs for which the operating subsidies are geared. But we have been delayed in being allowed to move forward with the rehabilitation program. And so we continue to have these high operating costs.

I think serious consideration by the committee of adjusting that subsidy timetable would be enormously helpful.

Finally, Mr. Chairman, I want to touch on another problem that we are confronted with elsewhere in the State of Maryland. This is the cost for fencing and nonoperational station improvements over the next few years in the northeast corridor. Meeting that cost is an impossible burden for the States, but it is very important to the operation of the rail system in a safe manner through that northeast corridor.

I have joined with Senator Pell in cosponsoring a measure to meet this problem and I am delighted that the committee has recognized the problem and has provided for it in the bill on page 17. I appear this morning in very strong support of this provision.

I want to thank the committee for this opportunity to appear. And I have every confidence that you will continue to report out legislation addressing the Nation's rail transportation problems in the positive and creative fashion that you have in the past, Mr. Chairman.

Thank you very much.

Senator LONG. Thank you very much, Senator Sarbanes.

I am well aware of the first problem that you mentioned. I have been across that ferry many times as a passenger before they built the highway across there. And I really appreciate that problem.

If we are able to do anything, I will try to see to it that that is particularly taken care of in this bill.

Senator SARBANES. That's right. That is our gateway to the South, to your part of the country, and we want to hold on to it. We don't want to lose it.

Senator LONG. You've got a good point there. And it should be taken care of.

Thank you very much.

[The statement follows:]

STATEMENT OF HON. PAUL S. SARBANES, U.S. SENATOR FROM MARYLAND

I appreciate the opportunity to present this testimony before the Subcommittee on Surface Transportation as it considers legislation to improve our Nation's vital railroad system. Mr. Chairman, your Committee has worked diligently over the years to assure that railroads continue to offer their important service to our Nation's industry and commerce; and I commend the Committee for initiating these hearings today.

There are several problems I am sure the Committee will focus on which are very important to those States which have substantial rail lines not included within the Final System Plan and which are under the continuous threat of rail service discontinuance. I intend to introduce legislation which deals with certain of these problems. One bill would amend the Regional Rail Reorganiza-

tion Act of 1973 in order to authorize two or more States to combine their use of rail service continuation subsidies. The other amends both the Regional Rail Reorganization Act and the Department of Transportation Act to extend for 15 months the period during which the Federal share of the costs of rail service continuation assistance is 100 percent.

Both bills are of particular importance to Maryland, Delaware, and Virginia because some of the branch lines not transferred from the Penn Central to Con-Rail run through the three-State area of the Delmarva Peninsula and are vital to that area's economic well-being. Since April of last year, the three States comprising the Delmarva Peninsula have labored diligently to maintain and improve rail service for their citizens.

Two major obstacles to this effort have been encountered: First, the substantial expenses of improving the railroad car float areas at the mouth of the Chesapeake Bay, and, second, the Federal Railroad Administration's delay in approving the State's rehabilitation program.

The car-float operation is vital to rail service on the Delmarva Peninsula because it is the only means of moving rail cars across the mouth of the Chesapeake Bay from Norfolk to Cape Charles, Virginia. Without the carfloat, the vital link to Virginia and to the rail lines further South would be lost, with very detrimental consequences for users on the Delmarva Peninsula and for the economic health of the area. There are some very expensive repairs urgently needed to be undertaken on the tugs which operate the car-float, and the most available and likely source of funds would be to transfer Delaware's unused entitlement to Virginia for this purpose. At the present time, the law is unclear whether the U.S. Department of Transportation may administratively undertake such a transfer which has been requested by the three States in a recent communication to Secretary Adams.

S. 1793, the Committee bill, and the bill I intend to introduce address this problem by permitting two or more states to combine Federal entitlements under section 402 for rail improvements which would benefit the States entering into such an agreement. This provision would enable the State of Delaware to transfer approximately $200,000 in unused entitlement to the State of Virginia so that necessary repairs to the car-float operation could be undertaken.

Second, I urge the Committee to extend for 15 months the 100 percent subsidy for rail service assistance to the States under the Regional Rail Reorganization Act of 1973 and the Department of Transportation Act. The rail subsidy scheme was designed to enable States to continue the rail service on branch lines not included in the Final System Plan. The subsidy was set at 100 percent from April of 1976 until April of this year. However, because of great delays in getting the States' rail rehabilitation programs under way, a further extension of the 100 percent subsidy is urgently needed.

The delay was caused principally because the Federal Railroad Administration imposed a burdensome project review process on the States as a precondition to use of the subsidy. Maryland felt this burden most severely because of the great number of branch lines on the Delmarva Peninsula which need extensive rehabilitation work in order to bring them up to the minimal standards for safe and efficient operation.

In Maryland, the FRA review and approval of what work could be done on the branch lines was extremely protracted. The delay in track rehabilitation required Maryland to continue train operations at very slow and inefficient speeds. This, in turn, meant that the operating cost of the branch lines did not decrease after the first year of the subsidy scheme, and their financial situation did not improve at the pace originally contemplated. With the declining Federal subsidy this has resulted in increased fiscal burdens on local government or added costs to the rail users. In April of this year, these non-Federal sources have had to supply 10 percent of the operating and maintenance costs, and they are presently scheduled to assume 20 percent of the burden next year.

The proposed legislation would extend the full Federal subsidy for 15 additional months. Such extension would enable the State and local jurisdictions throughout the northeast region to implement fully their rehabilitation effort so that the operating costs over the branch lines can be reduced. In addition, the 15-month extension will bring the subsidy period in line with the present Federal fiscal year. This will greatly facilitate the States' submission of applications for their entitlements.

Finally, Mr. Chairman, I would also very much like to indicate my support for the provisions of S. 1598, introduced by Senator Pell and which I was pleased

to cosponsor. I wish to commend the Committee for including the language in the Committee bill.

Maryland, as well as the other States in the Northeast, is interested in seeing the Northeast Corridor project become reality. However, requiring these States to pay 50 percent of the costs for fencing and nonoperational stations over the next several years is very onerous and might well be fiscally impossible. I urge the Committee to include the relief of S. 1598 in the rail legislation reported to the Senate.

The importance of this rail legislation for the Eastern Shore and for all of Maryland cannot be overemphasized. The rail lines serving the Eastern Shore and the entire Delmarva Peninsula are the lifeline for farming and industry and are critically important for sound economic development. The legislation to extend the 100 percent subsidy and to facilitate the transfer of entitlement funds is crucial to the efforts of Maryland, Delaware and Virginia to continue the freight rail service on these lines.

In addition, it is important to resolve the fencing and station contributions problem so that the high-speed passenger train service for Maryland and the other Northeast Corridor States can proceed.

I am confident the Committee, as it has done in the past, will soon report legislation addressing our Nation's rail transportation problems in a positive and creative manner.

Senator LONG. Now we will call the Honorable Walter Huddleston, if he is here.

[No response.]

Senator LONG. I guess he is not here.

Our next witness is Mr. M. J. Mighdoll, executive vice president, National Association of Recycling Industries.

STATEMENT OF M. J. MIGHDOLL, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC., NEW YORK, N.Y.; ACCOMPANIED BY EDWARD L. MERRIGAN, ASSOCIATION COUNSEL

Mr. MIGHDOLL. Good morning, Mr. Chairman.

Senator LONG. We are very happy to see you here, Mr. Mighdoll, and we will be happy to have your testimony on behalf of a lot of good citizens in this country.

This is a development which has often been ignored.

We look to the major producers of materials. We oftentimes overlook the contributions being made by the recycling industries. And I know I, for one, am aware of the fine contributions you are making.

We are happy to have your statement. I will include it in the record. And I hope you can summarize this statement.

Mr. MIGHDOLL. Thank you, Mr Chairman

I will make this as brief as possible.

Senator LONG. Thank you.

Mr. MIGHDOLL. My name is M. J. Mighdoll. I am executive vice president of the National Association of Recycling Industries, Inc. I appear here today with the association's counsel, Edward L. Merrigan.

We appreciate the opportunity the committee has afforded for the presentation of this testimony, and we shall endeavor to be as brief as possible.

My testimony, Mr. Chairman, concerns section 204 of the Railroad Revitalization and Regulatory Reform Act of 1976 entitled "Investigation of Discriminatory Freight Rates for the Transportation of

Recyclable Materials," and the unfortunate complete violation and defeat of the congressional mandate contained in that section of the law by the Interstate Commerce Commission.

Since section 204 originated in this committee, you will recall for almost 10 years Congress and responsible Federal, State, and municipal agencies have repeatedly emphasized that industrial utilization of recyclable materials in place of their virgin natural resource counterparts results in:

First. Major energy savings for the United States. As much as 95 percent energy conservation in aluminum manufacturing, 60 percent in paper production, and 70 percent in the copper industry.

Second. Conservation of scarce, depleting natural resources.

Third. Important reduction of industrial air pollution, water pollution, and water utilization.

Fourth. Reduced U.S. dependence on foreign cartels for critically important natural resource raw materials.

Fifth. Alleviation of bulging deficits in U.S. balance of payments resulting from increased reliance on foreign natural resources.

Sixth. Relief to State and local governments in their constant struggle against the "solid waste disposal crisis" and rising solid waste disposal costs.

I have included a chart at the end of this testimony, which indicates the dramatic savings of energy by utilization of recyclables today.

In 1976 at the current level of recycling, over 150 million barrels of oil are saved annually just by using recyclables in this country. And we are only scratching the surface at this point.

Over the years since 1965, Congress has enacted a series of laws aimed at attaining maximum industrial recycling levels in the United States and at eliminating all shortsighted, federally sponsored economic roadblocks to maximum recycling.

In 1965, Congress passed the Solid Waste Disposal Act. It directed the Environmental Protection Agency to investigate the effects of existing Federal programs and policies on industrial recycling and to recommend what might be done to eliminate all federally sponsored disincentives to the reuse, recycling, and conservation of materials.

In 1970, Congress passed two additional statutes: the National Environmental Policy Act and the National Materials Policy Act.

The former—NEPA—directed all agencies of the Federal Government "to use all practicable means * * * to enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources."

The second statute created the National Materials Policy Commission and directed it to develop a "national policy" that would increase the "reuse of materials which are susceptible to recycling * * * in order to enhance environmental quality and conserve materials."

In 1976, Congress enacted another statute, the Resource Conservation and Recovery Act, the purpose of which, among other things, is "to establish a cooperative effort among Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste" and to direct the Secretary of Commerce to deal effectively with all "economic and technical barriers to the use

of recovered materials" and to "encourage development of new uses for recovered materials."

The 1976 legislation also established a Resource Conservation Committee to be comprised of most top-level Cabinet officers to oversee the elimination of all existing disincentives to maximum resource recovery and conservation.

Finally, just last week when the House Commerce Committee formally reported the President's National Energy Act, it included a new provision which directs the Federal Energy Administration to establish targets for the increase of industrial recycling in the United States in the next decade—the purpose being to persuade American industry to try to double its current, extremely low recycling levels and, in the process, increase industrial energy conservation by as much as 1 million barrels of oil a day.

Similarly, just last week, the House Ways and Means Committee reported the tax portion of the Energy Act in which it designated industrial recycling materials as "energy property" and increased the investment tax credit for firms that install new machinery and equipment for the purpose of increasing industrial utilization of recyclable materials.

But a major insurmountable roadblock to maximum industrial recycling in the United States still remains, solely because an arbitrary, capricious, shortsighted ICC has stubbornly refused to obey not one, but two, successive congressional mandates to remove it.

I refer, of course, to grossly unjust, unreasonable, discriminatory railroad freight rates for recyclable materials, which prevent and impede the movement of those materials from collection points to industrial plants where they can be recycled.

When Congress passed the Regional Rail Reorganization Act of 1973, the following mandate to the ICC was included in section 603:

FREIGHT RATES FOR RECYCLABLES

The Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act, which will eliminate discrimination against the shipment of recyclable materials in rate structures and in other Commission practices where such discrimination exists.

The ICC capriciously responded to that statute by simply recodifying its old existing rules and regulations with reference to rate discrimination which had enabled the outrageous discrimination against recyclables to thrive.

The Commission took no action whatsoever to eliminate, reduce, or modify any rate charged for the movement of those materials.

On the contrary, the Commission seriously exacerbated the existing discrimination by approving, during the short period from 1974 to 1976, seven successive new, cumulative rate increases for recyclable materials, totaling 38.3 percent, or roughly $100 million a year, while in the process it actually allowed the railroads to exempt certain competing virgin resource materials from the same rate increases.

In the final analysis, therefore, the Commission arbitrarily and unlawfully responded to the 1974 act of Congress by increasing transportation charges for shippers of recyclable materials by roughly $100 million per year.

This performance by the Commission led to the second clear, unambiguous congressional mandate to the Commission found in section 204 of the Railroad Revitalization and Regulatory Reform Act of 1976. There are no "ifs," "ands" or "buts" about section 204. It directed the Interstate Commerce Commission in plain unmistakable terms:

(1) To conduct an investigation of (*a*) the base rate structure for competing virgin natural resource materials and their recyclable counterparts, and (*b*) the manner in which such rate structure has been affected by successive general rate increases approved by the Commission in recent years;

(2) To place the burden of proof on the railroads to establish that their rate structures, as affected by recent rate increases, are just, reasonable, and nondiscriminatory;

(3) To remove, within 1 year, all portions of the rate structure, as affected by recent rate increases, which are either unjust, unreasonable, or discriminatory; and

(4) To report to the President and Congress all actions taken by the Commission to eliminate unreasonable or unjustly discriminatory rates for the transportation of recyclable materials.

The Commission conducted the prescribed investigation, but in all other respects it flatly violated and ignored the congressional mandates of section 204.

The short time allotted for this testimony makes it impossible for me to outline here all the devices the Commission employed to violate section 204. If this committee wants those details for the record, I shall be pleased to supply them.

But for the purposes of this hearing, it seems sufficient to state that only eight ICC Commissioners participated in the decision of February 1, 1977, which defeated the congressional mandates contained in section 204, and only five of those eight voted in favor of disobeying the law.

The other three, including the present Chairman of the Commission, Mr. O'Neal, and the Vice Chairman, Mr. Clapp, strenuously dissented.

In the first dissent, Commissioners O'Neal and Christian stated:

> I do not believe that the majority has complied with section 204 of the 4–R Act by issuing its report. Section 204(a)(2) requires the Commission to conduct an investigation of the rate structures of recyclable materials and competing virgin natural resource materials, in which the rail carriers bear the burden of proving that the rate structures are reasonable and nondiscriminatory. To me, this means that the entire burden of justifying the existing rate structures was placed on the railroads, who were obligated to demonstrate that such structures are reasonable and do not result in discrimination against recyclables. But under the majority's approach, this has not been done. The report dwells more on industry structures than rate structures and has unlawfully shifted the burden of proof to the ratepayers.

The record before the Commission, buttressed by detailed cross-examination of witnesses produced by the railroads and their virgin industry supporters, shows that, for decades, there has been a long-standing, close economic interrelationship between the railroads, on one hand, and certain large integrated corporations which produce and ship virgin natural resource materials by rail on the other.

Some of the larger railroads own vast timberlands and mines, and naturally they transport the virgin commodities they produce to market by rail.

In many cases they sell the virgin commodities they produce to large integrated corporations also engaged in the production and rail shipment of the same virgin materials.

These large integrated corporate producers, in turn, own their own railroads—either directly or through corporate subsidiaries—and they utilize those railroads and connecting lines to ship their virgin materials either to their own mills or to market.

Accordingly, representatives of the railroads, including representatives of the railroads owned by large integrated virgin material producers, sit together in the eastern, western, and southern freight associations and establish the rates which govern the movement by rail of both their own virgin natural resource materials and competing recyclable materials.

Senator LONG. I am going to ask you to suspend for just a moment while I accept a phone call. I will be right back.

Mr. MIGHDOLL. Yes, sir.

[Recess.]

Senator LONG. All right. Go ahead now.

Mr. MIGHDOLL. Thank you.

I was indicating, Mr. Chairman, the relationship that exists between the large virgin industry, integrated companies, and the railroads, wherein, to put it very fundamentally, they are one, sometimes act as one, sit as one.

And we have a situation where a shipper and carrier is one in setting rates which we must compete with in our recycling industry because we ship these materials to the same markets.

Senator LONG. I made the point in connection with the user charge on waterways, that the railroads have been given great advantages down through the years, and one of them has been the enormous amounts of land, and there are many resources on those lands, and what you are saying here is that if you look at all of the virgin materials and all the ore that exists on those lands, and saw that it is to their advantage to move that to the market rather than to move recyclable materials, scrap iron, scrap aluminum, whatever, when from their point of view there would be more profit in moving the virgin materials to the market.

Mr. MIGHDOLL. That's right, sir. That's right.

We detailed just that really in the formal testimony.

Senator LONG. Yes.

Mr. MIGHDOLL. I would like to, at this point, to summarize it and to get to the dollars and cents of the issue, to point up to you, Mr. Chairman, what we have at the bottom of page 14 where we indicated that studies conducted by the Commission have determined that all rail traffic carried by the railroads throughout the country move at rates which on the average produce a revenue, variable cost ratio of 131.8.

On the average the railroads collect revenues from shippers of all types of goods, which exceeds the railroad's variable cost by 31.8 percent.

As you know, the 4–R Act directed the Commission to establish a basis for determining whether the railroads have market dominance or transportation monopoly over a particular traffic or particular commodities.

Late last year the Commission ruled that a presumption of "market dominance" exists under the 4–R Act when the railroads' revenue/variable cost ratio for a particular commodity is 160 percent or higher.

In other words, if the railroads' revenues exceed costs by 60 percent or more, a presumption of railroad dominance or monopoly over the movement of that commodity is in order.

Finally, late last year the Commission also ruled in a case involving coal transportation that a commodity of that nature, charged with a public interest as energy property, is entitled to a railroad rate structure which produces a revenue/variable cost ratio of 127 percent, that is, below the national average for all traffic.

With that background, let's examine the revenue/variable cost ratio evidence the railroads themselves produced under section 204 of the 4–R Act.

They are as follows: Most aluminum scrap throughout the United States has to move on the basis of revenue variable cost ratios equaling almost 200 percent; recyclable copper scrap, well over 200 percent; recyclable rubber, well over 200 percent.

And then, of course, you look at recyclable wastepaper, which is for the most part over the national average, but is competing with pulpwood and wood chips, approximately one-half less than the national average.

If the railroads can afford to carry all traffic in the United States at an average ratio of 131.8, and if the Commission has determined that commodities charged with a public interest such as coal should be carried at a ratio of 127, and if a revenue cost ratio of 160 connotes railroad dominance, the congressional mandate contained in section 204 of the act surely demands that action must be taken immediately to reduce rates for most of the recyclables listed above to a point where they produce at all times in the future a maximum revenue variable cost ratio of no more than 131.8, that is, the national average.

And, of course, dealing with recyclable wastepaper and textiles, the rates for those two materials must be reduced to break-even rate levels until the railroads themselves take action to bring rates for the competing virgin materials up to the break-even point.

Now, again using the railroads' own data, we show that nationally total railroad freight revenues exceed $18 billion. If Congress required the railroads to reduce rates for the recyclable materials we represent to the national average revenue/cost ratio of 131.8 percent the total cost to the railroads would be less than $35 million.

In other words, a figure which is roughly only one-sixth of 1 percent of the railroads' total annual freight revenues of $18.8 billion a year.

In conclusion, Mr. Chairman, we believe the time has come when fair, effective nondiscriminatory rates must be established for recyclables.

Section 204 directed the Commission to eliminate all such unreasonable discriminatory rates within 1 year. They did not.

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Six months have passed since that unfortunate ruling of the Commission last February, and the recyclable materials for which I speak are still laboring under a completely unreasonable rate structure.

We urge this committee to adopt and report a fair legislative solution to this problem as part of the national energy legislation currently before the Congress, or as part of the railroad legislation before this committee.

Rates for the movement of recyclable materials must be reduced from the presently exceedingly unreasonable discriminatory levels to the national average. That is, they must produce revenues for the railroads that do not exceed railroad costs by more than 32 percent.

And of course, the legislation we propose would authorize the Secretary of Transportation to eliminate any revenues some of the weaker railroads would lose by making comparable payments out of energy taxes or energy conservation taxes collected under the new national energy program, because, of course, the rate reductions for recyclables are intended to provide maximum energy conservation for the United States.

Thank you, Mr. Chairman.

Senator LONG. You know that this matter, of course, is a matter of controversy. The railroads make an argument which I don't think I need to state here, you're aware of it.

We'll certainly consider this. And one other thing, one way you might be provided relief is by way of the tax laws. I think you have been before the Finance Committee urging that, that the tax laws ought to at least give recyclables as much of a tax break as they do to the virgin material.

I take it that you also continue to advocate that that approach be used as well.

Mr. MIGHDOLL. Yes, sir. We fully intend to do that.

Mr. MERRIGAN. I think, Mr. Chairman, the problem is that the virgin commodities also continue to enjoy tremendous tax benefits. As you know, they have the capital gains tax treatment of the profits they collect from the sale of virgin timber and some ores, and they have the depletion allowance on most other ores.

So if you correct the tax situation, you correct only one of the maior problems confronting recyclables.

The second problem would still remain and that is, how do you move these materials from, say, a resource recovery center in a city which recovers the materials from garbage to the marketplace? If you have to pay freight rates that exceed the railroads' costs by 200 or 300 percent, you simply cannot do it.

Then, if the competing virgin commodity is traveling at far less than the railroads' costs, it is still impossible to compete for markets.

So what we are proposing here is something that could be done very, very easily for the railroads. Rates on recyclables would be reduced to the national average, which still gives the railroads revenues 32 percent in excess of their cost and the total cost to the railroads would be only $33 million.

They would then enjoy greatly increased traffic in these commodities to offset those relatively small revenue losses.

If they would increase their rates on noncompensatory traffic, and there are huge volumes of virgin materials that move way below the railroads' cost—pulpwood, for example, it is 67 percent of their costs in the areas where the railroads are supposed to be bankrupt—if you raise those rates slightly they would cover the entire cost of correcting this.

And last but not least, if this is still a real problem, the Federal Government this year is already giving the railroads over $2 billion. If you add just $30 million to that, you could cover the entire cost of doing this. The House energy bill that's coming to the Senate soon contains a provision that asks industry to double recycling in the next 10 years, hoping the Nation can thereby save 1 million barrels of oil a day through greater industrial recycling.

By reducing these rates you give the industry the ability to get to market, you give the industry the ability to use these materials and save energy. And yet it would cost only $30 million in reduced freight rates—a cost the Government could absorb out of energy taxes.

Senator LONG. I assume they will be contending that if you raise what they have to charge for pulp, for example, that more of that will move by truck than by other carriers.

Is that correct or not?

Mr. MERRIGAN. They may do that. But the railroads in the South recently moved the revenue/cost ratio on pulp up to 96 percent. That is still below cost. But they are at that point now. But, to do that, they had to provide 1,500 new railroad cars to the pulp shippers in the South.

In the East, the ratio is 67 percent and there you're dealing with bankrupt railroads. It certainly would be fair to increase those rates some. Let's move it to 75 percent of cost and I think you would completely offset the $30 million cost of this provision we are talking about. But if you can't do that, Senator, over on the House side they are proposing to increase taxes on energy to raise literally billions of dollars, some of which is to go to mass transit and highways. If only a very small percentage of those new energy taxes, less than 1 percent of the amount raised, would go to resolve this problem, and eliminate it for the benefit of the United States, there would be great national gains and the railroads would not suffer a loss at all. So there are several ways it can be done.

But we'll never solve the problem if we allow the railroads to point to the tax problem and say, clean that up and that will solve it.

Then you get to the tax area, and others say, clean up the transportation problem and that will help recycling. Both things must be done. And they can be done without serious cost to the U.S. Government or the railroads.

Senator LONG. The railroads say that variable cost does not include the full cost of the railroads' transportation services. What's your reaction to that?

Mr. MERRIGAN. Well, there are two ratios they use.

They use the ratio of revenue to variable cost and the ratio of revenue to fully allocated costs.

The ratio of revenues to variable costs at 100 percent includes all their costs of providing the transportation plus a 4-percent return over those costs.

The fully allocated costs include all of their capital costs and so forth.

The test the Commission used in the market dominance area is 160 percent, and that connotes complete railroad dominance or monopoly over traffic.

Our rates are running 200, 400, 300 percent, way over the market dominance ratio.

So I think that what we're using is the correct thing. In fact, the ratio of revenue to variable costs is what the 4–R Act uses and what the Commission uses.

Senator LONG. In other words, you're saying if you take 160 percent that the Commission uses to indicate monopoly dominance. Then if you limit that, I take it, then that would provide a great deal of relief?

Mr. MERRIGAN. That would provide some relief, yes.

Senator LONG. You think it ought to be below 160?

Mr. MERRIGAN. It ought to be at the national average of 131.8 And that's 32 percent revenues over the railroads' variable costs at all times.

Now, that means that nobody can say, well, these commodities have poor transportation characteristics or that Congress is forcing the railroads to handle the traffic at a loss, because with that kind of a revenue/cost ratio they will always make 32 percent more than their costs plus 4 percent or 36 percent, because the ratio at 100 percent already includes a 4-percent return over costs.

I tell you frankly I would like to go into any business where I could be guaranteed 36 percent over my costs. One reason the railroads are losing money is because they are carrying huge volumes of virgin materials at 70 percent of their costs. And until they stop that, they are going to be needing billions of dollars in Federal subsidies, because they are giving their transportation away.

And we think it's unfair for the recycling industry to have to subsidize these below cost virgin movements.

Moreover, 10 years or so down the road the United States will be running out of these virgin commodities. Every time we ship them at 70 percent of the railroads' costs, or every time the railroads charge the recycling fellow 300 or 400 percent to ship his commodity, the United States is on a collision course with disaster.

Senator LONG. Thank you very much.

Senator SCHMITT. Thank you, Mr. Chairman.

Mostly what I will ask is educational because this is a new subject for me.

Gentlemen, I will review your testimony. I apologize for coming in late. But could you describe for me, if you know a little bit about truck transportation, how it would relate to this problem?

For example, in the unregulated trucking industry, the independent truckers, as they call themselves, would not be allowed to carry the virgin materials, as I understand the regulations, in competition with the railroads. Do you have any figures or any general impression of how that competition would be affected if we raised the rates on virgin materials for the railroads?

Mr. MERRIGAN. We don't recommend that you raise the rates on virgin materials generally, Senator Schmitt. We recommend that where a

rate is noncompensatory, that is where a railroad is carrying vast quantities of virgin materials at less than their cost that that rate should be at least at the break-even point, or if you can't do that, raise it somewhat.

If you don't want to do that then the Federal Government will have to subsidize that transportation.

Senator SCHMITT. Do you know how much traffic that will overflow into the trucking industry, do you have any estimate?

Mr. MERRIGAN. I don't think it would be significant, Senator. I think in the South, as I was telling the chairman a few minutes ago, in the seventies the railroads finally complained to the pulpwood industry in the Southern States, mainly up in the Virginias, and the Carolinas, that they thought their rates were 70 percent of cost and they should be increased. They increased them to 96 percent of cost. They gave them an increase in rates, but the railroads spent about $50 million in providing about 1,500 new cars that can ship only those commodities.

I think the big problem here is that the railroads over the years have owned their own timberlands, and the big companies own their own railroads. And they sit together on these freight associations. They make these rates together. And that is the evidence before the Commission in this case we are talking about. They have tie-in arrangements. They exempt these commodities from the general rate increases they impose on the other commodities.

And we, over the years, without any representation in these rate-fixing associations, we pay vast increases whereas the virgin commodities own other railroads, and the virgin companies owning the commodities and railroads have fixed rates too low.

We certainly don't want to drive the railroads' traffic over to the truck lines.

The railroads are anxious to keep this traffic out of the trucks, but in order to do that, they are going to have to make the rate structure for both virgin and recyclable commodities fair and just.

Senator SCHMITT. Do you know how the ICC regulations for truck transport relate to recyclables, are they considered virgin?

Mr. MERRIGAN. They are considered recyclables for trucking purposes, too. They have special rules for recyclables.

Senator SCHMITT. Are they regulated?

Mr. MERRIGAN. Yes. They are regulated.

Senator SCHMITT. That is something that might be worth looking at because they have sort of become virgin again, they will be reused.

Mr. MERRIGAN. We have nothing against the virgin industry. All we want to do is eliminate discrimination in rates against recyclables.

Senator SCHMITT. I understand.

Mr. MERRIGAN. We don't want to subsidize the transportation of virgin commodities any longer.

Senator SCHMITT. I think Government regulation within the transportation industry as a whole has greatly distorted what otherwise might work pretty well. Now our challenge in this committee is to try to gradually remove some of those distortions so the consumer can get the best price possible. It is going to be a tough job; and it may take 10 or 20 years to do. I think most of the Congress is committed now to try to deregulate as much as possible with as little adverse consequences as possible on the consumer.

Mr. MERRIGAN. All we are here for, there have been two past congressional mandates to remove the unreasonable rates on recyclables. And the Commission has failed to do it. In fact, in the last case, the present chairman and the vice chairman vigorously dissented, and said the Commission has violated the law by not doing it. Before you deregulate therefore, please let them correct this situation.

Senator SCHMITT. I understand.

You may have covered this in your testimony. If not, maybe you would like to submit a statement for the record or comment on it now: but what do you forecast as the rate of growth of the volume of recyclables, over the next two to three decades?

Mr. MIGHDOLL. I would like to comment on that, Senator. Let's take a commodity like aluminum, keeping in mind that well over 90 percent of all the bauxite aluminum comes from overseas sources. We today are only recycling approximately 20 percent of all the aluminum needs of the United States. And we are discarding each year as much recyclable aluminum as we are using, well over 1 million tons of recyclable aluminum is being lost each and every year, often because of the freight rates which make it impossible to recover, process the material, and then ship it again to a consumer. It has been contended by our industry and by the leading recycling companies in the United States, that the recycling volume for aluminum could go up 50 percent within a 5-year period if the railroad situation were worked out and if the tax laws that the chairman referred to earlier were corrected; 50 percent in one commodity within 5 years.

Take a commodity such as wastepaper. We were recycling 35 percent of all the wastepaper in the United States in the late forties; 25 percent, well, through the sixties. Today, in 1977, we are recycling at a rate of less than 18 percent, just about half of where we were some 30 years ago.

At the same time countries such as Japan and Germany have gone up slightly.

We were at a 9- to 10-million ton rate during that period I mentioned above.

Today we are still only at about 11 million in a peak year such as 1973 and 1974 we went up to 12. But only a small percentage of the total needs in the United States at a time when other countries such as Japan, West Germany, are recycling up to about 50 percent of their wastepaper.

Senator SCHMITT. Recycled paper does not work very well in some of the new printing equipment that is being used, as I understand it; some of the computer-operated technologies cannot use the recycled paper. Is that a general problem in the industry?

Mr. MIGHDOLL. No, sir.

Some of the leading newspapers in the United States, including those here in Washington, in New York, and throughout the country, are using considerable quantities of recycled newsprint. And in the studies run by the Publishers Association, they get top marks in terms of all the tests they do.

Senator SCHMITT. That is beside the point.

Go ahead with your statement.

Mr. MIGHDOLL. We forsee in most recycled commodities, levels increasing up to 50 percent within the next 10 years.

All of that was, by the way, made part of the testimony presented in the Commission investigation under the 4–R Act.

Not only did the Commission choose to ignore it, but even questioned the competitive nature of recycled materials with virgin materials, straining, indeed, when the same companies are using both materials in the same plant to produce the same product. That is the extent to which the Commission went to really avoid the issue.

And far from placing the burden of proof on the railroads, they really just ignored the simple facts in the case. And that is why we are here today to urge the committee to take a legislative approach to this problem. We just don't think the Commission is capable of objective and fair and honest facing up to this issue as the statutory mandate clearly put upon them.

Senator SCHMITT. Are you familiar with the legislation that has been introduced to enable independent truckers to perform backhaul operations and if so, would that assist your industry?

Mr. MIGHDOLL. I am not familiar with that.

Senator SCHMITT. It is just to allow truckers who carry produce in one direction to backhaul regulated commodities, which could incidentally, be recycled material, do you think that would be a factor?

Mr. MIGHDOLL. It could be a factor. I can't really measure the impact of it.

Senator SCHMITT. If you have any information within your purview, I think the committee would appreciate that.

Mr. MIGHDOLL. Fine.

Senator SCHMITT. My final question is: Do you see any need for a distinction between strategic and nonstrategic recyclable material in rate structure on an interim basis?

You know, there is a lot of things that we generally consider strategic, if they were cut off we would be in serious trouble.

Mr. MIGHDOLL. The ones we represent are aluminum, copper, lead, zinc, and I think all of those can be considered, all of which would be in the strategic category if we went to war.

We think it is important, in World War II they depended on the recycling of these materials.

Senator SCHMITT. There are some areas in this country where, in a pinch, we could start to refine some of the materials we have.

Mr. MERRIGAN. All of the recyclable metals certainly are strategic. I think rubber is a strategic commodity which should get favorable rates. Wastepaper, in World War II we recycled 34 percent of it. When you consider most of the newsprint comes from Canada, I don't know what the international problems might be in the future, but it would be beneficial to make more newsprint at home from many standpoints than to depend upon Canada for our newsprint.

So I think that all of the rates, all of the commodities we speak for would be in the area that should be favored by the rate structure on that basis, and also on the fact that they save tremendous amounts of energy. The chart attached to the back of our testimony shows that.

Certainly from the solid waste standpoint, the cities and states call it a crisis, I think that is another angle to be considered.

So when you look at all of these public interest things bearing down on recycling and see us paying freight rates that are as they are, 200, 300 percent over the railroads' costs, I mean it is just ludicrous.

And the reason we are here is Congress has twice now in 1973 and 1976 directed the Commission to eliminate these unfair rates. I was before them for almost 2 months last year. And they came up with a decision that is just absolutely unbelievable, it is out in the thin air somewhere.

And two of the Commissioners vigorously dissented. So the time has come for Congress to say, let these materials travel at the national average. And I don't see how anybody could possibly object to that.

Senator SCHMITT. Thank you, Mr. Chairman.

Mr. MIGHDOLL. Thank you, Mr. Chairman.

Senator LONG. So your position is that there is a fantastic energy savings in using recyclable materials.

Mr. MERRIGAN. Yes.

Mr. MIGHDOLL. That is correct.

Senator LONG. Everything else, you have to separate the wheat from the chaff, when using recyclables you got the type of material you want right then and there. Even in wastepaper.

You don't have to saw off the bark and separate out what you are going to use. The waste you throw in there can be used 100 percent. Isn't that correct?

Mr. MIGHDOLL. That is correct. Readily available.

Senator LONG. When you are looking at something like ore, obviously on the face of it, when you heat that ore up you are seeking to separate one element from another. So you are separating a lot of waste material from the part that you are able to use.

And when you are using waste, all you have to do is just heat that which you are going to use and you don't have this problem of separating one from the other. You are going to use everything you heat; isn't that correct?

Mr. MIGHDOLL. That is correct.

Senator LONG. So there is a savings in using the recyclables from an energy point of view.

Senator SCHMITT. Just to add a historical perspective, aluminum is a case that we keep coming back to. One reason we do is that it is one of the new elements that our civilization uses that no other civilization has ever used as a metal. Lead, zinc, copper, those are all things that thousands of years have gone by and we have had energy sources available to refine them.

Suddenly, to use aluminum we have had to increase our availability of energy because there are bonds there between aluminum and oxygen and it takes energy to break them.

Aluminum is one of the most energy intensive metals that we use. There will be others, and we are going to see this same discussion appear as the decades go by with those elements.

Mr. MIGHDOLL. That is right.

Senator LONG. Now can you give me some occasion, how much of that dirt that we call bauxite is something that you will be able to use when you put it, when you heat it and how much of it, and what percentage of it is going to be rejected, that is waste——

Mr. MERRIGAN. The evidence before the Commission was that, I am talking from memory, I think it was 4 tons of bauxite makes 2 tons of alumina; 1 ton of aluminum.

Senator LONG. You are heating 4 tons in order to get it down to 1 ton that you can use? Is that correct?

Mr. MIGHDOLL. That is correct.

Senator LONG. Obviously that at a minimum means that just that aspect of it, a 4 for 1 waste of power to provide the material.

Now, it doesn't make any sense to have the freight law as well as the tax law discriminating in favor of energy waste.

And when it does so it injures your industry. And the only thing that seems to support that from my point of view, that you have special interests to contend with. And I am not here to criticize them, because they are looking after their own industry. You are looking after yours.

And they are entitled to look after theirs. But we should look at it from the point of view of the consumer, as well as the point of view of the Government short on energy, and I don't see how anything except economic muscle could be accounting for this situation.

Mr. MIGHDOLL. That is right, sir. Thank you very much.

Senator LONG. Thank you very much.

[The statement follows:]

STATEMENT OF M. J. MIGHDOLL, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF RECYCLING INDUSTRIES, INC.

Mr. Chairman, my name is M. J. Mighdoll. I am Executive Vice President of the National Association of Recycling Industries, Inc., 330 Madison Avenue, New York City, and I appear here today with the Association's counsel, Edward L. Merrigan of Washington, D.C. We appreciate the opportunity the Committee has afforded for the presentation of this testimony, and we shall endeavor to be as brief as possible.

The National Association of Recycling Industries (NARI) is the national trade association for the nonferrous metal,[1] wastepaper, textile and rubber recycling industries. Our membership consists of more than 800 firms located throughout the United States, all of which are engaged in the industrial recycling of nonferrous metals, wastepaper, textiles and rubber.

My testimony, Mr. Chairman, concerns Section 204 of the Railroad Revitalization and Regulatory Reform Act of 1976 entitled "Investigation of Discriminatory Freight Rates For The Transportation of Recyclable Materials", and the unfortunate complete violation and defeat of the Congressional mandate contained in that section of the law by the Interstate Commerce Commission.

Since Section 204 originated in this Committee, you will recall that, for almost 10 years Congress and responsible federal, state and municipal agencies have repeatedly emphasized that industrial utilization of recyclable materials in place of their virgin natural resource counterparts results in—

(i) major energy savings for the United States—as much as 95 percent energy conservation in aluminum manufacturing, 60 percent in paper production and 70 percent in the copper industry;

(ii) conservation of scarce, depleting natural resources;

(iii) important reduction of industrial air pollution, water pollution and water utilization;

(iv) reduced U.S. dependence on foreign cartels for critically important natural resource raw materials;

(v) alleviation of bulging deficits in U.S. balance of payments resulting from increased reliance on foreign natural resources, and

(vi) relief to state and local governments in their constant struggle against the "solid waste disposal crisis" and rising solid waste disposal costs.

[1] Recyclable aluminum, copper, lead, zinc and other nonferrous metals.

In 1976, for example, the metals, paper and rubber industries—all designated by the Federal Energy Administration as among the nation's top 10 major energy-consuming industries—conserved the energy equivalent of 151,563,000 barrels of oil by simply using recyclable materials in their manufacturing operations in place of competing virgin natural resource counterparts (see Appendix A hereto), and in the process they reduced air pollution by as much as 86 percent and water pollution by as much as 76 percent.

American industry, however, has merely "scratched the recycling surface". Industrial recycling percentages have remained relatively dormant for years, and in most cases, they have substantially declined since World War II. Congress has understandably been deeply concerned with the problem. Just last year, the House Committee on Science and Technology stated in its report in support of the Resource Conservation and Recovery Act:

"Only about 20 percent of paper is recycled; only about 8 percent of post-consumer and commercial ferrous metal is recycled, and only about 1 percent of aluminum. There is very little recycling of other metals from the post-consumer solid waste stream although there is some recovery from industrial scrap."

Accordingly, over the years since 1965, Congress has enacted a series of laws aimed at attaining maximum industrial recycling levels in the United States and at eliminating all short-sighted, federally-sponsored economic roadblocks to maximum recycling. In 1965, Congress passed the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.). It directed the Environmental Protection Agency to investigate the effects of existing federal programs and policies on industrial recycling and to recommend what might be done to eliminate all federally-sponsored disincentives to the reuse, recycling and conservation of materials (42 U.S.C. 3252a(a)(5), (6)).

In 1970, Congress passed two additional statutes—the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and the National Materials Policy Act (Public Law 91-512, secs. 201-206). The former (NEPA) directed all agencies of the Federal Government "to use practicable means . . . to enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources" (42 U.S.C. 4331). The second statute created the National Materials Policy Commission, and directed it to develop a "national policy" that would increase the "reuse of materials which are susceptible to recycling . . . in order to enhance environmental quality and conserve materials".

In 1976, Congress enacted another statute—the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)—the purpose of which, among other things, is "to establish a cooperative effort among Federal, State and local governments and private enterprise in order to recover valuable materials and energy from solid waste" (42 U.S.C. 6902(8)); and to direct the Secretary of Commerce to deal effectively with all "economic and technical barriers to the use of recovered materials," and to "encourage development of new uses for recovered materials" (42 U.S.C. 6951-6953). The 1976 legislation also established a Resource Conservation Committee, to be comprised of most top-level Cabinet officers, to oversee the elimination of all existing disincentives to maximum resource recovery and conservation (42 U.S.C. 6982(j)).

Finally, just last week, when the House Commerce Committee formerly reported the President's National Energy Act, it included a new provision which directs the Federal Energy Administration to establish targets for the increase of industrial recycling in the United States in the next decade—the purpose being to persuade American industry to try to double its current, extremely low recycling levels and in the process increase industrial energy conservation by as much as 1,000,000 barrels of oil a day.

Similarly, just last week, the House Ways and Means Committee reported the tax portion of the Energy Act, in which it designated industrial recyclable materials as "energy property", and increased the investment tax credit for firms that install new machinery and equipment for the purpose of increasing industrial utilization of recyclable materials.

But, a major insurmountable roadblock to maximum industrial recycling in the United States still remains—solely because an arbitrary, capricious, short-sighted Interstate Commerce Commission has stubbornly refused to obey not one but two successive Congressional mandates to remove it. I refer, of course, to grossly unjust, unreasonable discriminatory railroad freight rates for recyclable materials which prevent and impede the movement of those materials from collection points to industrial plants where they can be recycled.

In its 1973 Report to Congress under the Solid Waste Disposal Act, the Environmental Protection Agency stated:

"The economics of recycling are . . . influenced by apparently inequitable freight rates . . . which make the transportation of secondary materials relatively more costly than the movement of virgin materials."

And, in its 1973 Report to Congress under the National Materials Policy Act, the National Materials Policy Commission reported:

"Rail freight rates are an important factor in the economics of recycling. Transportation costs are a large percentage of the total cost of using some secondary materials. Often they determine whether recycling can be profitable. Certain railroad freight rates appear to discriminate against secondary materials in favor of virgin materials. . . .

"As transportation costs increase with distance, the rates determine not only whether the scrap moves but also how far. In effect, transportation costs isolate many forms of scrap from various buyers. . . .

"Wastepaper and textile scrap sometimes cost processors less to acquire than to ship.

"The higher the cost of transportation in relation to the final selling price, the less the processor can spend to upgrade scrap. Then only high quality scrap moves; the rest is solid waste."

The National Materials Policy Commission thus made the following recommendation to the President and the Congress:

"We recommend that the Federal Government take the necessary steps to correct the existing freight rate differentials between secondary and primary materials."

When Congress passed the Regional Rail Reorganization Act of 1974 (45 U.S.C. 701 et seq.), therefore, the following mandate to the Interstate Commerce Commission was included in Section 603 (45 U.S.C. 793):

"FREIGHT RATES FOR RECYCLABLES

"The Commission shall, by expedited proceedings, adopt appropriate rules under the Interstate Commerce Act which will eliminate discrimination against the shipment of recyclable materials in rate structures and in other Commission practices where such discrimination exists."

The Interstate Commerce Commission capriciously responded to that statute by simply re-codifying its old existing rules and regulations with reference to rate discrimination which had enabled the outrageous discrimination against recyclables to thrive. The Commission took no action whatsoever to eliminate, reduce or modify any rate charged for the movement of those materials. On the contrary, the Commission seriously exacerbated the existing discrimination by approving, during the short period from 1974 to 1976, seven (7) successive new, cumulative rate increases for recyclable materials totaling 38.3 percent—or roughly $100 million a year—while, in the process, it actually allowed the railroads to exempt certain competing virgin natural resource materials from the same rate increases.

In the final analysis, therefore, the Commission arbitrarily and unlawfully responded to the 1974 Act of Congress by increasing transportation charges for shippers of recyclable materials by roughly $100 million per year!

This performance by the Commission led to the second clear, unambiguous Congressional mandate to the Commission found in Section 204 of the Railroad Revitalization and Regulatory Reform Act of 1976. There are no "ifs", "ands" or "buts" about Section 204. It directed the Interstate Commerce Commission in plain, unmistakeable terms—

(1) to conduct an investigation of (a) the base rate structure for competing virgin natural resource materials and their recyclable counterparts and (b) the manner in which such rate structure has been affected by successive general rate increases approved by the Commission in recent years;

(2) to place the burden of proof on the railroads to establish that their rate structures, as affected by recent rate increases, are just, reasonable and nondiscriminatory;

(3) to remove, within one year, all portions of the rate structure, as affected by recent rate increases, which are either unjust, unreasonable or discriminatory;

(4) to report to the President and Congress all actions taken by the Commission to eliminate unreasonable or unjustly discriminatory rates for the transportation of recyclable materials.

The Commission conducted the prescribed investigation, but in all other respects it flatly violated and ignored the Congressional mandates of Section 204.

The short time allotted for this testimony makes it impossible for me to outline here all the devices the Commission employed to violate Section 204. If this Committee wants those details for the record, I shall be pleased to supply them. But, for the purposes of this hearing, it seems sufficient to state that only 8 ICC Commissioners participated in the decision of February 1, 1977 which defeated the Congressional mandates contained in Section 204—and only 5 of those 8 voted in favor of disobeying the law. The other 3, including the present Chairman of the Commission (Mr. O'Neal) and the Vice Chairman (Mr. Clapp), strenuously dissented—and what they said in their dissents adequately summarizes how the majority simply ignored and violated Section 204.

In the first dissent, Commissioners O'Neal and Christian stated:

"I do not believe that the majority has complied with Section 204 of the 4R Act by issuing its report. Section 204(a)(2) requires the Commission to conduct an investigation of the rate structures of recyclable materials and competing virgin natural resource materials, in which the rail carriers bear the burden of proving that the rate structures are reasonable and nondiscriminatory. To me, this means that the entire burden of justifying the existing rate structures was placed on the railroads, who were obligated to demonstrate that such structures are reasonable and do not result in discrimination against recyclables. But under the majority's approach, this has not been done. The report dwells more on industry structures than rate structures and has unlawfully shifted the burden of proof to the ratepayers.

"The report never comes to grips with the concept of discrimination. . . . In practical effect, the report has lifted the statutory burden of proof from the carriers and placed it on the shippers.

". . . The only inquiry appears to be 'what the traffic will bear.' There is no real analysis of rate structures. Nor is there any thorough analysis of the effect of the general increases upon those rate structures, which is required by Section 204.

"This agency has been promising, and under section 204 was required, to resolve the long-standing question of whether the underlying rate structures for virgin materials and competing recyclable material are unreasonable or discriminatory. The Supreme Court in *Aberdeen & Rockfish R. Co.* v. *S.C.R.A.P.*, 422 U.S. 289, 322–28 (1975), recognized our discretion to select an appropriate proceeding to examine the issue. This was supposed to be that proceeding. I am sorry to state that we have failed to resolve the issue by neglecting to abide by the rules provided by the Congress."

And, in a second, separate dissent, Vice Chairman Clapp stated:

"The majority, in approving this report, have failed to meet the Commission's responsibility under section 204 of the 4R Act. In essence Congress instructed the Commission to investigate the rate structure for "recyclable or recycled materials and competing natural resource materials, and the manner in which such rate structure has been affected by successive general rate increases". The Commission has responded in this report by saying the commodities do not compete. That misses the mark and by a wide margin.

"The record clearly demonstrates that rate disparities exist with regard to some of the recyclable commodities and their virgin counterparts. The investigation should have focused on the question of whether or not existing rate disparities are justified by a difference in transportation conditions. Instead, the Commission has applied a traditional Section 3(1) [of the Interstate Commerce Act] analysis, and has found that there is no competition between most of the commodities under investigation, and that shippers of recyclables are entitled to no relief.

"The concept of competition applied here is unrealistically narrow. . . ."

The Facts Presented By The Railroads Themselves Under Section 204 Of The 1976 Act Establish That Their Freight Rate Structures For Recyclable Nonferrous Metals, Wastepaper, Textiles, And Rubber Are Clearly Unjust, Unreasonable And Discriminatory—And Thus They Should Be Eliminated Without Further Delay.

As strong as the last mentioned dissenting opinions are, they plainly did not go far enough. Indeed, the evidence the railroads themselves produced before the Commission in response to Section 204 of the 1976 Act established beyond peradventure that their rate structures for recyclable aluminum, copper, lead, zinc, wastepaper, textiles and rubber are extraordinarily unreasonable and discriminatory—and thus, in the national interest, they must be eliminated without further delay.

The record before the Commission, buttressed by detailed cross-examination of witnesses produced by the railroads and their virgin industry supporters, shows that, for decades, there has been a long-standing, close economic interrelationship between the railroads, on one hand, and certain large integrated corporations which produce and ship virgin natural resource materials by rail on the other.

Some of the larger railroads own vast timberlands and mines, and naturally they transport the virgin commodities they produce to market by rail. In many cases, they (the railroads) sell the virgin commodities they produce to large integrated corportions also engaged in the production and rail shipment of the same virgin materials. These large integrated corporate producers, in turn, own their own railroads—either directly or through corporate subsidiaries—and they utilize those railroads and connecting lines to ship their virgin materials either to their own mills or to market.

Accordingly, representatives of the railroads, including representatives of the railroads owned by large integrated virgin material producers, sit together in the Eastern, Western and Southern Freight Associations, and establish the rates which govern the movement by rail of both their own virgin natural resource materials and competing recyclable materials.

It is hardly surprising, therefore, that these close economic and operating relationships between the railroads and some of the nation's largest integrated producers of virgin raw materials have led to the following grossly unreasonable, flagrantly discriminatory practices, proof of which is on the record before the Commission.

1. The railroads carry huge volumes of virgin natural resource materials "below costs" (as much as 33 percent below cost), and thus effectively force shippers of competing recyclable materials, who are always required to pay rates that produce revenues far in excess of the railroads' costs, to subsidize the movement of competing, virgin materials.

2. Shippers of virgin materials have been permitted "to negotiate" rate scales and rate formulas not available to shippers of recyclable materials.

3. Shippers of virgin materials have been accorded attractive "incentive rates" not heretofore available to shippers of recyclable materials.

4. Shippers of virgin materials have been exempted from general rate increases the railroads and the Interstate Commerce Commission have forced shippers of recyclable materials to bear, albeit such rate increases simply aggravated an already grossly-discriminatory base rate structure.

5. Shippers of virgin materials have been favored with extremely low rates for movement of virgin materials based on "tie-in arrangements" or "black-haul arrangements" shippers of recyclable materials cannot obtain.

6. The railroads have spent millions of dollars in recent years to provide hundreds of new, special purpose cars to shippers of virgin materials—cars which can be used only for the movement of those virgin materials—albeit the transportation rates paid by those virgin shippers still provide revenues to the railroads which are substantially below the costs incurred by the railroads to provide that transportation.

Under a rate-fixing system such as that described above—wherein those possessed of huge economic stakes in virgin natural resource materials control the rate structures and the rate-increase procedures—the establishment of unfair, unreasonable, discriminatory rates for the transportation of competing recyclable counterparts of those same virgin natural resource materials has been constant and exceedingly oppressive.

Over the years, of course, the railroads have established hundreds of thousands of rates for the transportation of virgin and recyclable materials throughout the United States. So how does the Commission determine whether rates generally, or a particular rate structure, are unfair, unreasonable, or discriminatory? It does so by examining the railroads' Revenue/Variable Cost Ratios applicable to the rate or rate structure under review.

Studies conducted by the Commission itself have determined, for example, that All Rail Traffic Carried By The Railroads Nationally moves at rates which produce, on the average, a Revenue/Variable Cost Ratio of 131.8 percent. In other words, on the average, the railroads collect revenues from shippers of all types of goods—from automobiles to grain to machinery etc.—which exceed the railroads' variable costs by 31.8 percent.

As this Committee knows, the Railroad Revitalization and Regulatory Reform Act also directed the Commission to establish a basis for determining whether the railroads have "market dominance" or "transportation monopoly" over particular traffic or particular commodities. Late last year, the Commission ruled that a presumption of "market dominance" exists under the 4R Act when the railroads' Revenue/Variable Cost Ratio for a particular commodity is 160 percent or higher. In other words, if the railroad's revenues exceed costs by 60 percent or more, a presumption of railroad dominance or monopoly over the movement of that commodity is in order.

Finally, the late last year the Commission also ruled, in a case involving coal transportation, that a commodity of that nature, charged with a public interest as energy property, is entitled to a railroad rate structure which produces a Revenue/Variable Cost Ratio of 127 percent—i.e. below the national average for all traffic.

With that background, let's examine the Revenue/Variable Cost Ratio evidence the railroads themselves produced under Section 204 of the 4R Act. They are as follows:

[Percent]

Commodities	East	South	West
Recyclable aluminum residues	431	227	213
Recyclable aluminum scrap	177	184	161
Miscellaneous recyclable nonferrous metals	319		227
Recyclable copper scrap	191	211	226
Recyclable copper matte	204		281
Recyclable lead matte	156		171
Recyclable lead and zinc scrap	186	226	155
Recyclable zinc dross	179	214	151
Virgin pulpwood	67	97	103
Virgin wood chips	61		
Recyclable wastepaper	124	138	150
Recyclable textile waste	125	109	144
Recyclable rubber		228	241
Recyclable rubber waste	128	164	164

Plainly, if the railroads can afford to carry "All Traffic in the United States at rates which produce an average Revenue/Cost Ratio of 131.8 percent—and if the Commission has determined that commodities charged with "a public interest" (such as coal) should be carried at rates that produce a Revenue/Cost Ratio of 127 percent—and if a Revenue/Cost Ratio of 160 percent connotes railroad dominance or monopoly over a commodity, the Congressional mandate contained in Section 204 of the 1976 Act surely demands that action must be taken immediately—without further debilitating delay—to reduce rates for most of the recyclables listed above to a point where they produce, at all times in the future, a maximum Revenue/Variable Cost Ratio of no more than 131.8 percent—e.g. the "national average" for all freight that moves by rail.

Recyclable wastepaper and textiles, of course, require a different solution—at least on a temporary basis. Since they compete with virgin materials (pulpwood and wood chips) which, for decades, have enjoyed "noncompensatory rate" levels ("below-cost" rates), the rates for those two recyclable materials must be reduced to "break-even" rate levels until the railroads take action to bring rates for the competing virgin materials up to the "break even" point. Then, rates for the competing virgin and recyclable paper-making materials should move together. In no case, of course, should the rates for recyclable wastepaper or textiles exceed the "national average" Revenue/Cost Ratio of 131.8 percent.

Nothing less than this will fairly respond to the Congressional mandate of Section 204, and to our nation's obvious urgent need to increase industrial recycling and conservation of critical energy and natural resources without further delay.

Two additional short comments seem necessary. First, the record before the Commission under Section 204 established that all recyclable materials our Association represents have extremely favorable transportation characteristics for the railroads. They move in General Purpose Boxcars, which are loaded by shippers and unloaded by consignees. The railroads do not have to furnish any special equipment to move the traffic, and they do not get involved in the loading or unloading. Modern technology allows shippers to move carload weights and volumes which are comparable to those of virgin material counterparts. In any event, since under the rate solution outlined above, the railroads will always receive more revenues (roughly 31.8 percent) than their costs to move these recyclables—in no case can anyone validly contend that higher rates are required because of the "transportation characteristics" of the traffic. The movement of recyclables will always produce a fair, reasonable Revenue/Cost Ratio for the railroads.

Secondly, it is clear that the unreasonable, discriminatory rate structure for recyclable nonferrous metals, wastepaper, textiles and rubber can be rectified without seriously reducing the railroads' revenues.

The railroads offered evidence before the Commission to show that their total freight revenues are currently as follows:

	Billions
Nationally	$18.84
Eastern railroads	6.37
Southern railroads	3.20
Western railroads	9.27

The railroads also proved under Section 204 of the 4R Act that currently their revenues for recyclable nonferrous metals, wastepaper and textile traffic are as follows:

	Millions
(i) Recyclable nonferrous metals:	
Nationally	$43.22
Eastern railroads	14.51
Southern railroads	7.63
Western railroads	21.09
(ii) Recyclable textiles:	
Nationally	13.60
Eastern railroads	4.86
Southern railroads	5.39
Western railroads	3.34
(iii) Recyclable wastepaper:	
Nationally	58.69
Eastern railroads	21.23
Southern railroads	14.47
Western railroads	22.99

If rates for recyclable nonferrous metals are reduced to the national average revenue/cost ratio of 131.8 percent by Congress or the Commission, the revenue losses for the railroads will be only—

	Millions
Nationally	$17.00
Eastern railroads	5.80
Southern railroads	3.10
Western railroads	8.10

If rates for recyclable wastepaper and textiles, in turn, are reduced to the fully compensatory "break-even" level, as urged above, the revenue losses for the railroads will be—

	Millions
Nationally	$16.39
Eastern railroads	3.69
Southern railroads	4.53
Western railroads	8.17

In sum total, therefore, these rate reductions for the above recyclables, which are so vitally necessary and imperative in the national interest, would amount to only $33.39 million nationally—a figure which is roughly one-sixth of 1 percent of the railroads' freight revenues of $18.84 billion a year.

And, of course, those revenues do not include the monies the railroads receive from the sale of virgin natural resources they mine and harvest from their own mining and timberland properties.

But clearly, the rate reductions necessary to bring justice to the unreasonable, debilitating rate structures presently preventing maximum industrial recycling in these commodities in the United States do not have to result in any net revenue losses to the railroads. Those rate reductions will lead to substantial increases in the volumé of these recyclable commodities which can move by rail, and this will bring offsetting revenues to the railroads. Also, the railroads can actually gain revenues if they will act to make all traffic moving by rail pay compensatory rates—rates which at least cover all of the railroads' variable costs.

CONCLUSION

The time has certainly arrived for full, fair, effective elimination of all rates for the transportation of recyclable nonferrous metals, wastepaper, textiles and rubber which are unjust, unreasonable, or discriminatory. Section 204, in fact, directed the Commission to eliminate all unreasonable, discriminatory rates for these materials "within one year"—i.e. before February 5, 1977.

Six months have passed since February 5, 1977, and the recyclable materials for which I speak are still laboring under a completely unreasonable, discriminatory rate structure. Indeed, during 1976, the Commission actually approved 2 new rate increases for all recyclable materials while it was simultaneously violating Section 204. In other words, since Section 204 was passed, the Interstate Commerce Commission has added further insult to injury as far as recyclables are concerned, and has shown an inherent inability to comply with Congressional mandates or to take actions in energy and resource conservation areas which are urgently necessary and in the national interest.

Accordingly, we urge this Committee to adopt and report a fair legislative solution to this problem as part of the National Energy legislation presently before the Congress.

If American industry is to meet Energy Efficiency Targets and Resource Recovery and Conservation Targets established by the Federal Energy Administration under the Energy Policy and Conservation Act and the National Energy Act presently before Congress—and if the United States is to save 1,000,000 barrels of oil a day through maximum industrial recycling—rates for the movement of recyclable materials must be reduced from their present exceedingly unreasonable, discriminatory levels to the national average—that is, they must produce revenues for the railroads that do not exceed railroad costs by more than 36 percent. And, where specific virgin materials still travel at noncompensatory rate levels, rates for competing recyclable counterparts must be further reduced in the national interest.

As indicated above, these legislative actions should not result in any real loss of revenues for the railroads. But, if they do, then the legislation we propose would authorize the Secretary of Transportation to eliminate those losses by making comparable payments to the railroads out of energy taxes or energy conservation taxes collected under the new National Energy Program, because of course, the rate reductions are intended to produce maximum energy conservation for the United States.

APPENDIX A

ENERGY SAVINGS IN RECYCLING COMPARED WITH VIRGIN MATERIAL USE

	Tons recycled in 1976	Energy required to manufacture 1 ton from virgin material (kilowatt-hours per ton)	Energy required to manufacture 1 ton from recycled material (kilowatt-hours per ton)	Energy saving per ton by recycling (kilowatt-hours per ton)	Total annual energy saving in 1976 (kilowatt-hours)	Savings in 1976 equivalent barrels of crude oil
Aluminum	[1] 1,433,000	[2] 51,379	[3] 2,000	49,379	70,903,000,000	41,710,000
Copper	[1] 1,423,591	[3] 13,532	[3] 1,726	11,805	16,798,000,000	9,880,000
Zinc	[1] [9] 179,416	[4] 5,770	[6] 2,300	3,470	622,573,000	366,000
Lead	[1] 670,000	[4] 2,550	[6] 935	1,615	1,082,000,000	636,000
Iron and steel	[7] 46,111,452	[8] 4,270	[8] 1,666	2,704	124,685,000,000	73,340,000
Paper	[2] 10,158,000	[5] 6,730	[5] 2,520	4,210	42,765,000,000	25,156,000
Rubber	[5] 125,000	[8] 9,150	[8] 2,680	6,470	808,750,000	475,000
Total					257,664,323,000	151,563,000

[1] Bureau of Mines/U.S. Department of the Interior.
[2] U.S. Department of Commerce/Bureau of the Census.
[3] Oak Ridge National Laboratory (Report No. ORNL–NSF–EP–24).
[4] Battelle Memorial Institute Report No. PB–245759, "Enregy Use Patterns in Metallurgical and Nonmetallic Mineral Processing."
[5] U.S. Environmental Protection Agency "Report to Congress," February 1973, p. 11, table 4 (converted from British thermal units to kilowatt-hours using standard conversion of 1 kWh=3413 Btu.
[6] Private communication from Arthur D. Little Corp.
[7] U.S. Bureau of Mines and Arthur D. Little estimates (receipts are used rather than consumption as figures for consumption do not distinguish between home and purchased scrap).
[8] Industry estimates.
[9] Zinc content.

Senator LONG. Next we will call Mr. Clifford Elkins, executive director of the National Conference of State Railway Officials.

Welcome, gentlemen.

STATEMENT OF CLIFFORD ELKINS, EXECUTIVE DIRECTOR, NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS; ACCOMPANIED BY PETE METZ, ASSISTANT SECRETARY, MASSACHUSETTS EXECUTIVE OFFICE OF TRANSPORTATION AND CONSTRUCTION; JOHN BIVENS, ASSISTANT DIRECTOR FOR PLANNING OF THE ARIZONA DEPARTMENT OF TRANSPORTATION; WILLIAM T. GOODWIN, DEPUTY COMMISSIONER OF THE TENNESSEE DEPARTMENT OF TRANSPORTATION; AND HARRY A. REED, DEPUTY COMMISSIONER FOR POLICY AND PLANNING OF THE MINNESOTA DEPARTMENT OF TRANSPORTATION

Mr. ELKINS. Thank you, Mr. Chairman.

On behalf of the conference, which is the railway committee of the American Association of State Highway and Transportation Officials and, as such, represents the interests of all States engaged in rail programs under the Railroad Revitalization and Regulatory Reform Act of 1976, which is now all States except Alaska and Hawaii, we thank the committee for the opportunities to present our views today.

Speaking for the conference I would like to introduce Mr. Pete Metz, assistant secretary of the Massachusetts Executive Office of Transportation and Construction; Mr. John Bivens, assistant director for planning of the Arizona Department of Transportation; Mr. William T. Goodwin, deputy commissioner of the Tennessee Department of Transportation; and Mr. Harry A. Reed, deputy commissioner for policy and planning of the Minnesota Department of Transportation.

In addition to their State functions, Mr. Bivens and Mr. Metz are national cochairmen of the National Conference of State Railway Officials.

Our concerns and needs for legislative changes in the RRRR Act are based upon national concerns, and these needs are not confined to a few States or regions.

As you may note, our representation today covers four States with differing rail concerns and problems, but we speak to you jointly in what we believe to be a solution to the current problems.

The causes and the problems may vary from State to State, but yet we feel there are national problems.

To lead off we will have Mr. Bivens of the Arizona Department of Transportation.

Mr. BIVENS. I am John A. Bivens, Jr., assistant director, Arizona Department of Transportation in Phoenix, Ariz., where I head the transportation planning division. My responsibilities with the department include the development of Arizona's statewide transportation systems plan for all modes of transportation, including railroads, highways, aeronautics, and public transit.

I sincerely appreciate the honor of appearing before you today to discuss the Railroad Improvement Act of 1977 and the existing rail programs which vitally affect each American.

In addition to my responsibilities with the Arizona Department of Transportation, I also am privileged to serve as the cochairman of the American Association of State Highway and Transportation Officials Standing Committee on Railroads, the cochairman of the National Conference of State Railway Officials, and the chairman of the Western Region Conference of State Railway Officials. These are State organizations, and my views of our national railroad situation is from a State perspective.

Those of us in State government are pleased that you in the Congress provided for a strong State role in previous railroad legislation—in the Regional Rail Reorganization Act of 1973 and in the Railroad Revitalization and Regulatory Reform Act of 1976. Since the passage of these landmark bills, State officials nationwide have been struggling in cooperation with the railroads, the labor leaders, the shippers and receivers, our communities, and the Federal Railroad Administration to carry out the programs embodied therein.

Our efforts have had mixed results; some successes and some failures, frequent frustrations, and continuous challenges.

There are numerous outstanding features in existing legislation, and you are to be commended on providing for a significant State role in the railroad assistance program, for recognizing that it takes time for States to "gear up" for full participation—clearly seen in the graduated matching fund provisions, for requiring State rail plans, and for

requiring these rail plans to be integrated with other transportation systems planning.

I am pleased to report that the States, with few exceptions, have effectively responded by full and active participation in the railroad programs provided by your legislation.

Governors have designated a State agency to administer the program.

State agencies have obtained the needed qualified staff. State rail planning work statements and applications for planning grants have been prepared and submitted in accordance with the legislation and FRA regulations. I regret to report that at this point in the process, damaging delays have been encountered.

Numerous States outside the Northeast and Midwest region have expeditiously initiated their State rail plans in an effort to obtain the needed rail service assistance program funds.

Very few States have actually received their planning grant funds. Without the planning grant funds and a federally approved State rail plan, the States have been unable to assist the railroads with the necessary funds for branch line improvements.

In spite of a "Let's get on with it" attitude by the States, we have been helpless to effectively use the program. The appointment of Mr. Sullivan as the FRA Administrator offers great promise in getting the program moving.

Those of us in the States outside the 17-State Northeast and Midwest region covered by the 3–R Act are fortunate in at least two ways.

First, the States within this region have shared with us their experience, knowledge, and expertise.

Second, the railroad problems we face in the remainder of the Nation are less severe and of a different nature.

Our railroads are generally financially stronger and less likely to be faced with immediate bankruptcy. I do not want to leave you, however, with the false impression that we are problem free and without deep concern. Such an impression would not be accurate.

This Nation is blessed with an extensive interconnected railroad network which is important to anyone, regardless of residency location.

Agricultural products, mined resources, fuels and energy resources, lumber and construction materials, and manufactured products must be maintained and improved if the distribution of products transported by rail are to safely reach their destinations.

Weak links in our national rail network must be strengthened. It is our understanding that this is the purpose of the rail service assistance program.

In the Western States, which are also an essential part of the national rail network, rail abandonments are less of a problem than in the Northeast and Midwest and parts of the Southeast.

We do have a number of marginal lines desperately in need of rehabilitation and improvement. In many instances we are vigorously pursuing industrial expansion and new development along the rail lines worthy of continuing. In order to convince businesses that private investments in locations on these potentially subject to abandonment lines are sound, the State must be able to assure the relative permanence of rail service. We believe the best way to do this is to rehabilitate the lines to a standard compatible with permanent service.

We are pleased to strongly support the provisions of the Railroad Improvement Act of 1977, which extends the rail service assistance program to lines that are designated as "potentially subject to abandonment."

Senator LONG. You have exceeded your time. I would ask you to just summarize your statement.

Mr. BIVENS. Thank you, Mr. Chairman.

In summary, what I would like to cover is that we are concerned about the 90-day provision associated with the section 5, subsection (n). And we are very much concerned relative to the problem of permitting railroads to be abandoned in our given States without the customary ICC presentation and giving us an opportunity to deal with that.

The main point I would like to make, Mr. Chairman, in summary, is that the States have gotten their act together reasonably well.

We are working diligently to try to bring that program together, and here are substantial differences among the States, even in the western region. In South Dakota, for example, about 52 percent of their lines are subject to rail abandonment.

And yet in Nevada, as a contrast, there are only about 6 miles of railroads that are subject to abandonment.

So we see wide ranges of responsibility associated with this program, wide differences between the States.

And we would urge flexibility in terms of this program.

Thank you very much for the opportunity to be with you.

[The statement follows:]

STATEMENT OF JOHN A. BIVENS, JR., ASSISTANT DIRECTOR, ARIZONA DEPARTMENT OF TRANSPORTATION

Gentlemen, I am John A. Bivens, Jr., assistant director, Arizona Department of Transportation in Phoenix, Ariz., where I head the Transportation Planning Division. My responsibilities with the department include the development of Arizona's statewide transportation systems plan for all modes of transportation including railroads, highways, aeronautics, and public transit. I sincerely appreciate the honor of appearing before you today to discuss the Railroad Improvement Act of 1977 and the existing rail programs which vitally affect each American.

In addition to my responsibilities with the Arizona Department of Transportation, I also am privileged to serve as the Co-Chairman of the American Association of State Highway and Transportation Officials Standing Committee on Railroads, the Co-Chairman of the National Conference of State Railway Officials, and the Chairman of the Western Region Conference of State Railway Officials. These are state organizations and my views of our national railroad situation is from a state perspective.

Those of us in state government are pleased that you in the Congress provided for a strong state role in previous railroad legislation—in the Regional Rail Reorganization Act of 1973 and in the Railroad Revitalization and Regulatory Reform Act of 1976. Since the passage of these landmark bills, state officials nationwide have been struggling in cooperation with the railroads, the labor leaders, the shippers and receivers, our communities, and the Federal Railroad Administration to carry out the programs embodied therein. Our efforts have had mixed results; some successes and some failures, frequent frustrations and continuous challenges.

There are numerous outstanding features in existing legislation and you are to be commended on providing for a significant state role in the railroad assistance program, for recognizing that it takes time for states to "gear up" for full participation—clearly seen in the graduated matching fund provisions, for requiring State Rail Plans, and for requiring these rail plans to be integrated with other transportation systems planning.

I am pleased to report that the states with few exceptions have effectively responded by full and active participation in the railroad programs provided by your legislation. Governors have designated a state agency to administer the program. State agencies have obtained the needed qualified staff. State Rail Planning Work Statements and applications for planning grants have been prepared and submitted in accordance with the legislation and FRA regulations. I regret to report that at this point in the process damaging delays have been encountered. Numerous states outside the Northeast and Midwest Region have expeditiously initiated their State Rail Plans in an effort to obtain the needed rail service assistance program funds. Very few states have actually received their planning grant funds. Without the planning grant funds and a Federally approved State Rail Plan, the states have been unable to assist the railroads with the necessary funds for branch line improvements. In spite of a "let's get on with it" attitude by the states, we have been helpless to effectively use the program. The appointment of Mr. Sullivan as the FRA Administrator offers great promise in getting the program moving.

Those of us in the states outside the 17 state Northwest and Midwest Region covered by the 3R Act are fortunate in at least two ways. First, the states within this region have shared with us their experience, knowledge, and expertise. Secondly, the railroad problems we face in the remainder of the nation are less severe and of a different nature. Our railroads are generally financially stronger and less likely to be faced with immediate bankruptcy. I do not want to leave you, however, with the false impression that we are problem free and without deep concern. Such an impression would not be accurate.

This nation is blessed with an extensive interconnected railroad network which is important to everyone regardless of residency location. Agricultural products, mined resources, fuels and energy resources, lumber and construction materials, and manufactured products must be distributed by rail nationwide. Branch lines as well as main lines must be maintained and improved if the distribution of products transported by rail are to safely reach their destinations. Weak links in our national rail network must be strengthened. It is our understanding that this is the purpose of the rail service assistance program.

In the Western states, which are also an essential part of the national rail network, rail abandonments are less of a problem than in the Northeast and Midwest and parts of the Southeast. We do have a number of marginal lines, desperately in need of rehabilitation and improvement. In many instances we are vigorously pursuing industrial expansion and new development along the rail lines worthy of continuing. In order to convince businesses that private investments in locations on these potentially subject to abandonment lines are sound, the State must be able to assure the relative permanence of rail service. We believe the best way to do this is to rehabilitate the lines to a standard compatible with permanent service.

We are pleased to strongly support the provisions of the Railroad Improvement Act of 1977 which extends the rail service assistance program to lines that are designated as "potentially subject to abandonment".

Several of our Western States would like to see the eligibility extended further—perhaps even to new construction. The renewed interest in domestic energy resources and their effective utilization at facilities such as coal fired generation plants may warrant consideration of new construction. This is of special interest to states such as Utah and Arizona. For example, the Salt River Project in Arizona is constructing a billion dollar new coal fired generation facility at St. Johns. In cooperation with the Santa Fe Railroad, they propose the construction of a new 45 mile rail line to assure the rail delivery of coal to the plantsite. Unit coal trains are also a major problem in states like Colorado and Wyoming. The frequency and length of these trains without grade separations at highway intersections keep sections of the communities divided for extended periods of the day and night.

The States are actively working together in an attempt to increase the effectiveness of the rail service assistance program and to improve the working relationship with Federal rail officials. We are encouraged to see the new provision in the Railroad Improvement Act of 1977 permitting states to combine their Federal entitlements to improve rail properties within their respective states or regions.

The suggested amendment to Section 5 of the Department of Transportation Act (49 U.S.C. 1654), new subsection (n) causes many of the states serious concern. California, Arizona and numerous other states strongly oppose the new pro-

vision which allows railroads to bypass the formal ICC abandonment process for those branch lines where the State does not offer financial assistance. Many states are not legally able to respond to rail operators' requests for operating subsidy. A failure on the part of the State to provide subsidy would mean that shippers, local government and other interested parties—including the railroad unions—would be denied their right to participate in the abandonment proceedings.

In Section 803(h) of the 4R Act of 1976 the following statement appears: "Notwithstanding the provisions of the preceding sentence, the entitlement of each State shall not be less than 1 percent of the funds appropriated." There are several states which will be unable to participate in the rail service assistance program without this or a similar provision in the 1977 Act. We urge that Subsection 5(h) be amended to add such a provision in the new Act, thereby assuring meaningful participation by all the states in the program.

We are pleased to see the adjustment in the 4R Act of 1976 making the fiscal years of eligibility correspond with the Federal fiscal years. Since the 33 states outside the Northeast and Midwest Region have been delayed through no fault of their own, we are disappointed that the 100 percent year could not also be extended. Perhaps you would be willing to reconsider this aspect.

In summary, the state which I represent are pleased with most of the provisions in the Railroad Improvement Act of 1977. We are interested in seeing that viable branch lines of our railroads are rehabilitated, improved, and continued. We are convinced that with adequate and timely Federal financial assistance—prior to the lengthy and costly abandonment proceedings—selected branch lines can be made useful and productive components of our national railroad network. We assure you that the states are working diligently with the railroads to provide the nation with this essential private component of our integrated national transportation system.

Thank you for the opportunity you have given me to appear before you. With your assistance, we can make our railroads even more useful. I will be pleased to answer any questions you may have.

Senator LONG. I am going to ask that the other witnesses confine themselves to the 5 minutes allotted to them. And we won't ask any questions until we hear from the four witnesses.

Mr. ELKINS. Mr. Metz will be our next witness.

Mr. METZ. Thank you very much, Mr. Chairman.

We have found the Federal assistance made available in the 4–R Act to be very helpful in the State objectives in this program. And I have to emphasize that whereas I still believe that some people conceive of the Federal assistance program for branch line continuation as a program designed to phase out losing branch lines and let them down gently with a minimum of political impact, the States, in fact, have made a very different and constructive use of the program, we believe.

In the Northeast the States have chosen to only continue about half the lines that were made available for subsidy. On the other half we're concentrating our resources to try to undo the many years of neglect that those lines suffered from and to stimulate the local economy. In many cases the local economy that can benefit tremendously from rail freight service.

In Massachusetts, and this is generally true across the States, we're seeking to return these lines to viable status. To stimulate new industry, to stimulate the enlargement and revitalization of industries that have suffered for some time.

We view the program as one which needs considerable flexibility to meet the industrial development goals we are trying to seek along these lines. In that respect, Mr. Chairman, many of the provisions of the Senate bill will be quite helpful. We're pleased with the revisions that allow more flexible use of the in-kind benefits provision of

the legislation so that we may carry over some benefits to subsequent years.

We are pleased with the provisions that count the date of initation of rehabilitation projects, for instance, as the date by which the Federal share is reckoned, and the Federal funds are reckoned. We need that for good planning and we need it for the necessary assurances so that we can be sure that the program gets carried out.

We are particularly pleased, Mr. Chairman, with the three abandonment sections which are provided in S. 1793, allowing us to get a handle on what's coming down the pike in the future.

It's clear that the railroads intend to abandon more rail lines, if there is no other program around. We would like to, rather than go in after all of the havoc of abandonment has happened, be able to go in before abandonment and receive those lines where it appears that rehabilitation or other capital assistance can save the line. And S. 1793 has the necessary provisions to allow that. And we support those provisions.

We like the changed language and the new language about the Federal-State relationship which we think better defines the States' responsibility here.

Senator Sarbanes spoke of our support for the multiple State cooperation provisions which we think will be very helpful.

And, lastly, let me say that the provisions in S. 1793 which provide funding for recreation use of lines which are abandoned look to us to be wise provisions and a good program. We do have some problems with S. 1793. And I would like to mention those.

Amongst other things we do, we're trying to marry what started out as a Northeast program with what's now a national program. And there is some unequal treatment. I doubt that the committee has intended that.

We would like to see all of the provisions that are in one program, the Northeast, say, available to the States in the rest of the country, and vice versa, so the two programs are legislatively supposed to get together next year. And clearly equal treatment is appropriate.

We have concerns about the provisions in S. 1793, that provide for new abandonment authority. And we are opposed to those provisions.

Congress enacted, revised the abandonment provisions of the Interstate Commerce Act 2 years ago in the 4–R Act; those procedures are only now getting underway. It would be totally inappropriate, in our view, to enlarge, to have a new abandonment authority at this point. In fact, we think the reverse is needed. We are very concerned about the continuing efforts by States, even—by railroads even in the Northeast to seek more and more abandonments. That's not the way to go. And certainly, we don't need new expanded authority for railroads to abandon their lines. We must ask that the provisions that provide for a 1-percent minimum for each State's aid, and for reallocation of the assistance that has not been used, be retained. They seem to have been dropped in the amendments of S. 1793.

There are several things, Mr. Chairman, that we would recommend to the committee, that you add to the Rail Improvement Act. An 80-percent funding ratio for Federal-State cost sharing seems to be the appropriate place for this program to go. It is clearly the place where

all other Federal transportation assistance programs are going. And we recommend that you adopt an 80-percent ratio for the last 3 years of the program.

We would like to see, Mr. Chairman, the power given to the ICC to, as they are making decisions on abandonments, and as States are proposing replacement carriers for the carrier who is being allowed to make an abandonment, for the ICC to have the power to give adequate authority to the replacement carrier to do a good job in serving that line, and particularly in some cases this means giving the carrier the authority to operate over the lines of the abandoning carrier.

The ICC does not exercise that authority now. And we are prepared to recommend some specific language to include that.

In addition, we are aware, and—we are aware of transfers that will be coming along from ConRail to the States in the next few years, of properties that ConRail has found they don't need, or ConRail may abandon; we would like to have the indemnity afforded to these States, that ConRail now receives against protections which may be handed down in future court decisions.

That, generally, is the position I would like to express to you on behalf of the Northeast States.

As a Massachusetts State official, and speaking solely for my State, I mention one other brief concern, and that has to do with the Northeast corridor provisions that are here.

S. 1793 provides funding so that States who are not able to assemble their costs of the Northeast corridor program would not have to do so.

Massachusetts has—does have its funding available for the portion of the Northeast corridor project. And we would rather see that any additional funding that's made available to the Northeast corridor project be added on to the present funding. Because, it's becoming clear that the project is underfunded.

We are very concerned that the project go forward, and very concerned that it be adequately funded, and Massachusetts is prepared to contribute its share.

Mr. ELKINS. Mr. Reed is our next witness, Mr. Chairman.

Mr. REED. Thank you, Mr. Chairman.

Mr. Chairman and distinguished Senators, I am here today representing the Minnesota Department of Transportation because of the importance of S. 1793 to the State of Minnesota. Minnesota's diverse economy relies heavily on a strong and healthy transportation system. Rail facilities are of particular importance to our No. 1 industry—agriculture. The Twin Cities metropolitan area is a focal point for transfer of goods from rail, water, and trucks serving the upper Midwest market area.

The State of Minnesota currently has 7,158 miles of operating railroad. Within the last 5 years, 575 miles have been abandoned. Presently, 932 miles are either pending abandonment or have been identified as anticipated subject to abandonment within the next 3 years. Many of these lines are victims of the vicious cycle of deferred maintenance—reduced service level—reduced shipping levels, resulting in additional deferred maintenance.

We are not concerned which came first—reduced shipping levels or reduced service level. What we are concerned about is how to get these

lines with definite potential back functioning as a useful part of Minnesota transportation system. This can be accomplished through a coordinated program of abandonment of those lines which are obviously unnecessary and upgrading those lines which have meaningful potential.

In 1976, the Minnesota Legislature appropriated $3 million for a branch line rehabilitation and upgrading program. In 1977 the legislature appropriated an additional $3 million. The purpose of this program is to correct deficiencies in the Minnesota rail system before they become unsolvable. Funding for individual projects are provided by the users, the railroad, and the State. Money furnished by users are to be repaid by the railroad out of operating revenue produced on the line.

In addition to the Minnesota rail service improvement program, affectionately known locally as the MRSI program, Minnesota is involved in a comprehensive rail planning effort under section 803 of the 4–R Act. We have made a major effort to contact all shippers on 18 lines which have recently been abandoned or are pending abandonment to determine their interest in section 803 of the 4–R Act. Shippers on two lines have submitted offers of financial assistance to ICC or operating railroads, and three others are expected to submit offers in the near future. We are requiring that the shippers provide the State matching share as an indication of realistic interest.

Giving you this short background as to Minnesota's railroad interest, I would like to make a few comments regarding S. 1793.

We fully support the expansion of the eligible lines to include those lines pending abandonment, anticipated to be abandoned, and designated as potentially subject to abandonment. This will provide an opportunity to assist lines which have a potential to be viable prior to the abandonment process. We support the alinement of the program period with the Federal fiscal year. This would significantly simplify the administrative and budgeting process. We recommend that the 100-percent Federal participation period be extended an additional 3 months through the 1977 Federal fiscal year. The initiation of the rail planning process was delayed about 3 months while the States awaited the Federal rules and regulations. Extension of the 100 percent period through September 30, 1977, would allow the States to complete the planning which should have been accomplished at 100-percent funding rate. We do not endorse continuation or upgrading projects be 100-percent federally funded.

It appears to be the intent of Congress to make this program a federally assisted State program. This aspect should be emphasized by requiring that the FRA cannot reject a State program on the sole basis that prior Federal approval was not obtained as stated in section 2(e). This is very important in light of the slow Federal startup on this program.

We have some very strong concerns about section 2(n) and section 5(a). These sections essentially substitute the designated State agency decision to subsidize a rail line for the ICC abandonment process. While we agree that this concept will result in a rational abandonment process, there are many fundamental problems:

First, the shippers lose the due process to which they should be entitled.

Second, the State is put in the precarious situation of either providing continuation assistance or having the line be abandoned without the assurance of adequate Federal financial support. The railroads could flood the State with continuation proposals and potentially viable and necessary lines could be abandoned because no funds were available.

S. 1793 allows the carry over of in-kind benefits from prior years. This concept if fully supported, however, the definition of in-kind benefits should include all State money spent on lines eligible for section 803 rather than State expenditures for continuation projects only.

I would like to make one final comment on the allocation process. We believe that the allocation process specified in the legislation will provide a much broader basis for fair distribution of funding. However, we strongly suggest the establishment of a minimum percent or dollar value for each State. Many Western and Southwestern States are not faced with an abandonment problem today; however, they do have other types of rail problems which they should address immediately. Congress specifically required that the rail planning process be part of an ongoing integrated transportation planning process. This amendment deletes the previous 1-percent minimum for those States who receive less than 1 percent in the relocation formula. We would suggest that some minimum again be established.

Thank you very much for this opportunity to present the Minnesota Department of Transportation concerns to you today. States such as Minnesota are addressing their rail problems, and legislation such as this makes it possible to effectively develop and implement meaningful plans.

Mr. ELKINS. Now Mr. Goodwin.

Mr. GOODWIN. Thank you, Mr. Chairman.

On the subject of the Federal share, we are delighted to see that the act extends its period to coincide with the new Federal fiscal year. We would support the concept that Senator Sarbanes had relative to the extension of the Federal fiscal year. It is doubtful that any of the 11 States in region 2 would be able to use the 100-percent share even if it was extended to September 30, because most of us have not yet completed our State rail plan.

We are delighted with the comments concerning the in-kind benefits, and we hope to see that appear in S. 1793.

The subject concerning the project initiation dates was somewhat covered by Mr. Metz. And I think we certainly would support the fact that a project-initiation date should be at which time the States are beginning to develop their project plan.

Subsection 5 of the DOT Act deals with eligibility. And we would like—we like the concept of these sections as the States may become involved with the railroad prior to abandonment, and develop a preabandonment strategy. We think this is very important to us in region 2.

The subject of priorities, the Federal-State relationship, we feel here that the States should be able to establish these priorities prior to the FRA approval of these things. In many cases we have the capability to begin planning the project, and we would like to have the project formally set up in-house. And we think it is not necessary to have the

FRA prior approval for that work. In other words, we think the States ought to have the priority on these projects.

Relative to planning, we are delighted to see that planning is contained in S. 1793. We feel it is a continuing process and ought to go forth for the 5-year period as is suggested.

There are other sections of S. 1793 that are discussed in my formal testimony.

I would like to comment in closing that the section 5 dealing with the Interstate Commerce Act, we like the concept of the accounting and reporting amendments, being helpful to the cities in our branch line analysis activities. And we hope that stays in the bill.

It is a pleasure to be here and having the opportunity of expressing to you our support of certain sections of S. 1793, and the fact that you are looking at these aspects of our national transportation system. We look forward to working with you further in this area.

Thank you.

[The statement follows:]

STATEMENT OF W. A. GOODWIN, Deputy Commissioner, Tennessee Department of Transportation

Mr. Chairman and gentlemen, my name is W. A. Goodwin, and I am the Deputy Commissioner for Transportation with the Tennessee Department of Transportation. I am delighted with the opportunity of speaking today on behalf of the National Conference of State Railway Officials relative to the Railroad Improvement Act of 1977.

The National Conference of State Railway Officials exists as a unit of the American Association of State Highway and Transportation Officials (AASHTO). The national conference consists of representation from each of the 50 State Departments of Transportation and Highways. The conference is organized in three regions. Region I encompass the 18 States in the northeast region that were brought together under the regional Rail Reorganization Act of 1973. Regions II and III consist of the remaining 32 states that were brought together as the result of the Railroad Revitalization and Regulatory Reform Act of 1976. These two acts have served as the catalyst for assuring that the nation's rail transportation facilities are maintained as a vital link of the nation's total transportation system.

You will recall that the purpose of the Congress in establishing the Rail Act of 1976 was to provide the means to rehabilitate and maintain the physical facilities, improve the operation and structure, and restore the financial stability of the railway system of the United States, and to promote the revitalization of such railway system so that this mode of transportation will remain viable in the private sector of the economy and will be able to provide energy efficient, ecologically compatible transportation services with greater efficiency, effectiveness and economy.

The Congress is to be commended for taking the action necessary to insure that the railroads outside of the northeast system do not deteriorate to the point that this viable element of our transportation system is no longer effective. The Rail Act of 1976 is basically a sound act and there are only a limited number of troublesome sections with which the states are having difficulty.

As you are well aware, the States have been engaged in developing and maintaining transportation facilities since the early 1900's. In particular, the highway system has evolved into the world's finest system for the movement of people and goods. Other modes of transportation have received attention by the states, but it is only with the Rail Act of 1973 and the companion act of 1976 that authorized and encouraged the States to become involved in rail transportation. Therefore, the states have little experience in this area, but have a great deal of concern and willingness to carry out the intent of Congress in preserving and rehabilitating this important transportation element.

My remarks today will be directed to the sections of S. 1793 that seem to impact on the 11 States in Region II.

SECTION 2 AMENDMENTS TO THE DEPARTMENT OF TRANSPORTATION ACT

(a) Section 5 (g)—Federal Share, In-Kind Benefits and Project Initiation Dates

(1) and (2)—These two sections extend the Federal share of the costs of any rail service assistance program to coincide with the new Federal fiscal year except that the 100 percent assistance period is not changed; however, the 90 percent is for a period of 15 months rather than the original 12-month period. This provision will aid the states in having continuous funding periods which match other Federal programs.

The Congress originally established an initial period of 100 percent federal assistance to cushion the shock of a large number of abandonments while the states organized their rail freight programs and worked to qualify for federal assistance, particularly the development of these state rail plans.

States in Region II have been unable to utilize 100 percent assistance for rehabilitation and capital projects because of the delays in staffing up and meeting Federal Railroad Administration project requirements. This situation justifies a careful review of extending the period for 100% federal assistance.

(3) The provision for states to carry forward in-kind benefits into a subsequent year's program is very desirable. Also, the definition of the date of project initiation to establish the period for rail freight assistance could be very beneficial where states wish to accumulate rehabilitation funds and hedge against anticipated inflation.

Present program regulations permit states to provide in-kind benefits, such as shipper donations and forgiveness of taxes, but do not allow states to carry over excess in-kind benefits and apply them to a subsequent year's state share. For example, if a state's year's share is $100,000 and a shipper donates a locomotive valued at $150,000 during that period, present regulations allow the $100,000 in value as the state share but will not allow the state to apply the remaining $50,000 in a subsequent year, even though the locomotive may have utility for several years.

(b) Subsection 5(h)—Eligibility

(c) Section 5(k)(1)—Eligibility

(d) Section 5(k)—Eligibility

These three sections expand the class of rail lines eligible for assistance to include lines for which an abandonment petition has been filed with the Commission, but on which the Commission has not yet acted, and, lines classified as "potentially subject to abandonment" or lines for which a carrier plans to submit an application for abandonment or discontinuance.

Under the existing program, federal rail assistance is not available until the Commission issues a certificate of abandonment or discontinuance for the line. At the same time, Congress created in the Rail Act of 1976 a mechanism for all railroads to identify lines which they are considering for abandonment. In the first year of experience, the states have determined the importance of providing resources to a line of railroad, particularly capital improvements, as soon as the state identifies the necessity of continuing and revitalizing rail service on a particular line. Under the present scheme the state must wait for the abandonment of a line of railroad. These sections will allow states to avoid the long and counter-productive effects of abandonment proceedings by permitting the state to provide assistance to lines when the railroad has indicated an intention to abandon the line, yet early enough to avoid the deterioration of service and physical plant associated with the railroads' pre-abandonment strategy.

(e) Section 5(l)—Priorities

This section deals with the Federal-State relationship concerning the setting of priorities on projects.

Federal Railroad Administration actions have indicated that they have a substantive policy role in reviewing the propriety of undertaking one project over another. NCSRO member states believe that the Congress intentionally chose the States as the principal in dealing with local and regional rail freight service problems, and that the states should have the flexibility to undertake projects without having to await final FRA approval before initiating the project.

(f) Section 5—Rail Service Continuation Payment

This section defines the criteria for states when considering rail service continuation payments on solely eligible projects.

The States prefer to deal with this provision, which provides capital assistance for rail service continuation through a different approach.

(g) Section 5(o)—Planning

This section extends the present funds earmarked for rail planning in each of three years to two additional years and increased to $10,000,000 per year.

The states believe that rail planning should be a continuous and on-going process and planning funds should be made available throughout the life of the rail freight program.

SECTION 3.—AMENDMENTS TO THE RAIL PASSENGER SERVICE ACT

No comment.

SECTION 4.—AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

No comment.

SECTION 5.—AMENDMENTS TO THE INTERSTATE COMMERCE ACT

These amendments relate to (1) assistance proposals, and (2) accounting and reporting systems.

The accounting and reporting amendments would be helpful to states in conducting branch line analysis.

SECTION 6.—AMENDMENTS TO THE RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

(a) Section 703(1)(A)(i)—No comment.
(b) Section 703(1)(B)—No comment.
(c) Section 703(5)—Compatible Equipment—No comment.
(d) Section 704(a)(2)—No comment.
(e) Table of Contents—Recreational Uses.
This provision adds a new section for:
Section 811—Acquisition of Abandoned Railroad Rights-of-Way for Recreational Uses.
(f) Section 809(d)—Increased Authorization—In support.

Senator LONG. Thank you very much, gentlemen.

Any questions?

Senator SCHMITT. Just one. I have one question for Mr. Bivens. You're familiar with the line that we abandoned in this part of the country a few years ago?

Mr. BIVENS. Yes, sir, I am.

Senator SCHMITT. Do you think there was a way to preserve that line, and could it have been done?

Mr. BIVENS. Senator Schmitt, I feel that had we had the opportunity to expand under the provisions of the proposed act, the kind of interrelationships among the States relative to it, I think there is a possibility that that line could have been saved.

Senator SCHMITT. Do you think there was a good reason to save that line?

Mr. BIVENS. I am not that familiar with the individual aspects of that particular line. I'm sorry.

Senator SCHMITT. Do you think that the consumer in the West is well served by subsidizing the rail lines? That's a very broad and general question, but really that's what we are aiming at. The western lines have been relatively economical for a number of years. Now you're saying they are moving away from being economical.

Mr. ELKINS. Senator, I think we have a very interesting case that is just developing that will answer that question.

In the southern California area, a portion or a subsidiary of the Southern Pacific is a case in point. The railroad has been put inoperable due to flooding areas. It has not yet been abandoned. The State of California is looking at that in conjunction with the State of Arizona.

There is a portion of that railroad that is quite important to the States' interests, particularly in the San Diego area. By using legislation such as this, the State may go in at an early date and get viable service maintained and the railroad operate again.

The industry has not had much look at it, because the problem they are faced with is low return on that line. So it's not a case of an operational subsidy but making that line viable through some initial massive capital infusion.

Mr. BIVENS. Senator, I would like to also respond to that question, if I may. I feel that those of us, particularly those of us in the Western States, are concerned because we see a good job being done by the States through their rail planning effort to really examine the individual lines associated with it. And in certain instances I think it is to the advantage of the States in the western part of the country to see the lines subsidized relative to it because of the products delivered to us from the facilities and industries along those branch lines.

That seems to me to be a logical justification for doing this. Particularly in view of the history that we have of the States not taking full advantage in terms of trying to continue lines that really don't make any sense to continue.

And we feel that a strengthening of the program in terms of being able to deal with rehabilitation prior to abandonment makes a lot of sense.

Senator SCHMITT. Is there any tendency for the managers of the lines now to assume that the Federal Government and the States are going to step in and help them and therefore not be innovative in their attempts to maintain economic viability?

Mr. BIVENS. No, sir, I don't feel that that is, that that is a serious tendency on the part of most of the managers, at least in the State of Arizona.

I don't think that's a major problem.

Mr. ELKINS. Senator, Mr. Reed's reference to the elevators case may be a direction where this can happen, the question of the ICC proscribing service standards that must be observed before a railroad would become eligible for abandonment.

We think that safeguard should be put in there.

Looking to the experiences of the States that have these programs, now, we have an excellent relationship between the industry and the State. And it has not been a supplemental management doing its job. It has been in the low return on massive projects. We think there has been a very good record so far in the Northeast States.

Senator SCHMITT. One final question. To what extent has the projected movement of large amounts of coal affected the long-term outlook of these western roads?

Mr. ELKINS. It has varied greatly from State to State. Take Colorado for an example, the north-south route, going on into New Mexico, is a classic example, the frequency of train movements on that line has grown dramatically, and the environmental problem is one aspect of it..

Another aspect is a program such as is being faced in the Eastern States, Pennsylvania——

Senator SCHMITT. Excuse me. You said environmental problem.

Mr. ELKINS. Yes, of trains passing through these areas.

Senator SCHMITT. Are you talking about noise pollution?

Mr. ELKINS. Yes; noise pollution in particular.

Senator SCHMITT. People just don't grow up around trains.

Mr. ELKINS. I think they have missed a lot of that. And some of them have forgotten what it's like.

But in the Eastern States and in some of the Western States, it's a case of the roadbeds not being able to sustain the heavy traffic. And some investment is needed to bring these lines up to the capacity where they can handle these trains.

I think Mr. Bivens has a specific example.

Mr. BIVENS. One of the things we are concerned about is that if we're not successful, and this is particularly the case in Nevada, and in Utah, and in Arizona, and to some degree in your own State of New Mexico, is that if we're not successful in rehabilitating certain lines that are critical in relationship to the movement of coal and particularly in relationship to unit trains, unit coal trains, then we're going to be seeing additional deterioration not only of our rail system but of our highway system as well, because we are building additional power-generating plants that require that the extensive movement of fossil fuels in terms of generating those plants, that that be involved, and the intermodal aspect of this is a feature we would like in the legislation.

And we would encourage that even more.

Senator SCHMITT. Do you think the energy business should pay the costs of rehabilitation, or is that something the Nation should pay?

Mr. BIVENS. Senator, from my perspective, and this is only speaking as one representative here, I feel that that's a broad requirement on the American public because energy is a widespread type of function, and it's in our best interest to have adequate energy supplies.

Senator SCHMITT. I couldn't agree with you more. But we have gotten ourselves in trouble before by subsidizing the use of a particular energy source, and we may get ourselves in trouble again.

Do you have a final comment on how we avoid that dilemma?

Do we subsidize—we subsidized natural gas, and that's the base of our current problem.

It's obviously not the base of the world's problem, but it's the base of our current problem.

Mr. ELKINS. Senator, in the movement of coal by rail, I think that should cover the cost of moving it. If it doesn't——

Senator SCHMITT. Part of that cost is amortization of the improvements on the line required to move it.

Mr. ELKINS. Yes, sir. Yes, sir. If for some reason the costs should not be covered by the shipper or the user paying for it, then I think we have to relate it back to what is emerging in the national transportation policy. And we're particularly interested in the—in the fallout by the byproducts of that movement and how it affects the States, the cost of rate separations, the cost of branch lines, we feel it should relate to an overall national transportation policy.

Mr. REED. Senator, we have some good railroads and some bad railroads. And a few of the lines that will be carrying more of the unit coal trains from the Western States to the East are in very good shape. They have good trackage. But what we have is the fantastic increase, and some say a 25-percent increase, in unit coal trains usage, it puts a hardship on us, environmentally, and from the standpoint of the auto-train conflict.

The automobiles, the traffic conflicts. And we don't think it's fair for those communities to suffer from those conditions as the Nation strives for energy independence.

We think it's a national thing, that these communities and States should be helped in these separations of the train.

Mr. BIVENS. May I add one other comment in relationship to the subsidy question?

It appears to us that if we are successful in doing any adequate job of rehabilitation of certain lines and passing the costs on to the user of the, of those lines and the freight cost associated with it, then we in fact help to alleviate the problem of the subsidy level associated with it because we give permanence to those lines and we give the opportunity to be utilized more effectively, thereby decreasing the subsidy costs.

We have been unable to get the rehabilitation that's necessary, and therefore, the continuation of the subsidy cost has risen.

That has been one of our problems.

Senator LONG. Could I just ask this one question?

This became effective in February 1976; is that correct?

Mr. BIVENS. Yes.

Senator LONG. Did I understand you to say that so far there hasn't been one cash grant made out of this whole thing to fix up these railroads?

Mr. ELKINS. No, sir. In the Northeast the subsidy covered the deficit operation. That has been flowing.

Back on the Western part, on getting planning money, it has been very slow in coming. And I think only three or four States have received funds to do their planning.

Many States such as Illinois have been operating completely on their own money, and I think Mr. Bivens can give more specific examples of that.

Mr. BIVENS. Senator, the problem is precisely what you have indicated; that is, that we have been very slow in getting our planning money.

The State of Arizona applied in November. We have a whole log of—a whole chronology I would be glad to share with you in terms of what it has taken to get us to this point in our program.

Senator LONG. How much money have you had in Arizona?

Mr. BIVENS. We received a grant of $100,000 and all of that has gone for planning purposes. We have yet to get our rail plan.

Senator SCHMITT. I hope we can get them to operate on their own, rather than with us.

Senator LONG. Nationwide, how much has been made available to rehabilitate railroads?

Mr. BIVENS. Nothing in the Western States, Senator.

Senator LONG. Of the $360 million available, how much has been made available to rehabilitate railroads? That is what I want to know.

I am not talking about planning. There has been some money given for planning. But how much to rehabilitate railroads?

Mr. METZ. Of the $360 million, that is only available to the non-Northeast States. None of that has gone for rehabilitation. It is the $180 million that was part of the 3–R Act that has been available in the Northeast. And about 140 of that, if I recall correctly, has been appropriated and is on its way to the States.

The Northeast States do not have the same complaint with the Federal process about obtaining their funds that the rest of the country has. And we are very fortunate for that.

But we have a lot of sympathy for them.

Senator LONG. I am glad some money has been spent in the East. But how about the South?

Mr. GOODWIN. In region 2, no money has been spent.

Senator LONG. That is what they say in Louisiana.

Mr. GOODWIN. Yes, sir.

Senator LONG. It has been effective since February. We hope to get, then, in about 17 months, we hope to have some kind of a plan approved, and hope to start getting some money thereafter.

So we have passed the act, we passed the act in 1975. Nothing happened in 1976 or 1977. So in 1978 we hope to get some money.

Now, fortunately, we serve on 6-year terms. And I don't know how long the public will stand for this, if they expect something to happen.

It seems to me if you have to keep running for office, just tell the people to keep waiting, if you wait long enough, maybe 10 years from now, maybe something will happen.

Senator SCHMITT. I am just a freshman, Mr. Chairman. Don't discourge me yet.

Senator LONG. Well, that concerns me about the approach.

Now, I also happen to serve on the finance committee where we have voted for a program where we would have revenue sharing, or a vote today, something where you provide a tax credit, where the people who wanted to do something get the money to go ahead and do business with that money.

And I would ask you whether that might not be a better approach here, to do it like they do it in the revenue sharing, to provide the State with some money and say "Here is the money you can use to rehabilitate railroads."

At that rate it wouldn't be 4 years to drive the first spike.

Here we are up here in 1977 talking about something that started in 1975, and hoping that something will happen by 1978.

Now, that type of activity where you organize a bureaucracy and they sit around and think about matters, nothing ever happens, worries me.

Now, we will be asking some questions about this.

My impression is that they have not made the first loan. That they figure, well, let me see, if it is a loan at the bank, that the bank could make, the bank ought to make the loan.

On the other hand, if the bank doesn't make the loan, that might not be a safe Federal investment. So that nothing has happened.

96-474—77——5

I would have thought that it was understood from the beginning that they ought to be making the loans that—that if it is a loan the bank wants to make, to urge the bank to make it. But if the bank can't make it, they ought to be willing to go an extra mile and take a chance; otherwise we wouldn't have provided the money.

The idea was to make loans that the bank would not make.

Do you want to add to that, sir?

Mr. GOODWIN. I think your discussion points up two or three problem areas. One is that this is the first time that the States have had the opportunity of working directly with rail transportation and, therefore, we have had in our various departments—we have had to staff up in order to handle this activity.

In addition, the Administration has not been accustomed to working with the States, and the rules and regulations were a little bit tedious in coming out and getting into our hands.

So there has been sort of a joint delay here caused not only by the States, but by FRA.

It is for this reason that we have commented that they need to look carefully at the extension of the 100 percent program, and also it is for this reason that we think that the setting of the priorities ought to be by the States, and it is for this reason we have commented about the three abandonment strategy, if we begin to think about that activity.

As it is now, we have to wait until we get a certificate of abandonment.

Our general assembly last year set up a rail authority. That is the only way we could handle the situation in Tennessee, by setting up that authority.

We now have a State rail authority in Tennessee. And we are finishing up our State rail plan. And we hope to have this plan submitted to FRA by August.

It is that type of delay that has caused us our problems.

Mr. ELKINS. Senator, there is one thing on the legislation that we think will greatly assist in moving these projects forward and that is the ability of the States to start on projects without prior Federal approval.

This means if a State should err in its judgment about eligibility, the State has lost and its own money will go in. But if we can get this provision, I think we are going to get the money that is authorized moving.

The companion aspect of the bill, the title V program, which is an industry FRA type program, also has these similar frustrations.

We feel that the process has to be improved. And our suggestion is to start without prior FRA approval. We think that will help.

Senator LONG. Thank you very much, gentlemen. We appreciate your testimony. We will try to see that something happens.

[The following information was subsequently received for the record:]

NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS,
Washington, D.C. August 11, 1977.

SENATOR JOHN A. DURKIN,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR DURKIN: Please find the response of the National Conference of State Railway Officials to the questions submitted concerning provisions of Senate Bill 1793.

Question 1. With regard to the fundamental nature and basic intent of the local rail service assistance programs, what differences and conflicts do you perceive in the interpretations of the States as opposed to the FRA's view?

Answer 1. We believe the basic differences and conflicts that exists between the States and FRA is due to the different interpretation of the purpose of the State Rail Freight Assistance Program.

In the States view, the program is clearly intended to improve, rehabilitate, and revitalize the branch lines within the criteria enumerated within the Four R Act, as well as allow the continuation of services on unprofitable lines. The States are using the program to concentrate upon lines that are essential and have a meaning in the transportation system.

FRA's view was stated by Mr. John M. Sullivan in response to the Senate Commerce Committee's question No. 13 on his confirmation hearing (which is attached) and in part states, "I believe the Title VIII program is viewed as interim assistance to mitigate disruptive impacts to local communities from loss of rail service." Nowhere does FRA indicate they believe this section of the Act is intended to improve rail branch lines.

The Senate intended a revitalization program when it so modified the original language in the Three and Four R Acts and adapted a flexible branch line program to permit and encourage rehabilitation projects. This intent is indicated in the report of the Senate Committee on Commerce on S. 2718, dated November 26, 1975, Report No. 94–499.

Question 2. Railroad Labor organizations will be testifying against further extension of the State rail program, largely on the grounds that the protections available to employees to counter part of the effects of the Northeast abandonment program are not present in the 4R Act. Comment on this contention.

Answer 2. The testimony offered by Railroad Labor Organizations favor the extension of the State Rail Programs generally as provided in S. 1793. Any differences that may have existed, between the States and Railway Labor have been reconciled.

Question 3. The FRA believes that expanding the subsidy eligibility requirements to inculde lines "potentially subject to abandonment" is premature, that it should wait on the results of State Planning activities and federal studies, and that it will lead to greatly expanded funding outlays.

Would you please comment on the FRA's arguments regarding eligibility requirements.

Answer 3. We strongly believe that it is essential that a "pre-abandonment" program be enacted immediately.

With State rail planning approaching, the project stage planning for these project programs is restricted to lines that have been abandoned. Enactment of pre-abandonment programs will result in better State Rail Project Planning and lead to more efficient use of this program.

Since no increase in financial authorization is requested, we do not agree with FRA that the program will cause greatly expanded funding outlays. It means that only the higher priority and more essential projects will be able to be funded.

Question 4. The FRA opposes the provision in S. 1793 which would allow States to initiate projects in advance of the Federal approval and appropriation process. They believe that this change might result in cost disallowances and increased program funding levels. In light of your support for this provision, how would you respond to the FRA's arguments? What assurances can you offer that such consequences won't occur?

Answer 4. We disagree with FRA's contention that initiating projects in advance of their approval will cause any increased program funding levels. If a State were to initiate a project in advance and later find out it is ineligible due to other program criteria, the State did so at its risk and accordingly would have to fund it with State funds. The States are familiar with the project eligibility criteria and would only utilize this process for urgent projects that cannot afford the lengthy delay in getting needed projects approved by FRA.

This provision parallels Title 23 of the United States Code § 154 as applied to highway projects and has proven to be successful in this area.

Question 5. What is the State's viewpoint on the reallocation provisions which exist in current law, and do you support the proposed FRA change which would reallocate any uncommitted or unused funds only at the end of a fiscal year?

Answer 5. This issue may have differing viewpoints among the States, however, in actuality we note that FRA is now reallocating on a yearly basis. We believe that most of the States would be agreeable to this provision.

Question 6. To what extent do you believe the entire FRA project application, review, and approval process is too long and overly detailed? Is the FRA requiring an over-justification of projects? What suggestions could you offer to correct the situation?

Answer 6. We believe the present FRA project approval process is detrimental to the present program. We specifically suggest that, since the program is an entitlement program, the funds the States are entitled to should be expeditiously moved to the States. The State rail plan should be sufficient justification for projects and the flow of funds to accomplish projects.

Question 7. Please comment on the following statement: The 402/803 local rail service assistance program, intended to be entitlement programs, are begrudgingly administered as an adversary rather than a cooperative process.

Answer 7. Since FRA has required a planning work statement, State Rail Plan, and project applications we believe this process subverts the entitlement programs. We unfortunately agree with the statement since we have not seen a desire by FRA to move toward project solutions of rail branch line program but rather a tendency to use existing regulations as reasons not to move projects. We have not seen any interest by FRA to ease and simplify existing regulations.

Question 8. To what extent have the States contributed to the delays that have plagued the local rail service assistance programs to date?

Answer 8. There may have been isolated instances where one or two States have contributed to delays. However, we believe that the States have shown remarkable progress in developing State Rail Plans and programs. It is respectfully pointed out that in the non-403 States a national rail program was in being and offered States little or no opportunity to have trained personnel on hand, issues addressed, regulations developed, and develop a program in a timely process.

Question 9. In terms of standards for track rehabilitation, how do the States differ from the FRA's position?

Answer 9. We believe progress has been made in this regard. However, we believe the States position that FRA Class II track II standards to be the rule is still not accepted by FRA. We believe that unless it can prove that FRA Class II is the most cost effective, this standard should be the agreed upon minimum. The State of Iowa, which has had a developed program which preceded the Four R Act, has found that Class II to be the most effective standard.

Question 10. Comment on the proposition that, if States are truly concerned about abandonments, they might reduce taxes and other State imposed burdens on troubled lines.

Answer 10. This area is important and the States are striving toward a balanced modal State policy which will offer a better regulatory and policy climate for the railroads. Our encouragement and suggested improvement of the In-Kind benefits Section of S. 1793 is recognition of our concern in this area.

Question 11. Comment on the feasibility of using the State Rail Program to input funds for rehabilitation to carry coal to ultimate consumers such as factories located along branch lines.

Answer 11. We believe the State Rail Program is an appropriate place to input funds relative to upgrading and improving branch lines to have sufficient capability to carry coal to ultimate consumers. Such programs should allow each State to have needed flexibility to best meet its own needs and should include such elements as: grade-separations, consumer relocations, and other related items.

Question 12. Since the intent of the Title VIII program of the 4R Act was to improve and revitalize the branchline system of the railroads, how can FRA speed up and simplify its implementation? Only three States have received planning monies in the non-Northeast Region and only a few projects have moved forth in the Northeast Region.

Answer 12. It is not my understanding that the intent of the Title VIII program is to revitalize branchline systems of the railroads. I believe that the Title VIII program is viewed as interim assistance to mitigate disruptive impacts to local communities from loss of rail service. Such disruptions, it was felt, could result from the Final System Plan implementation or from the restructuring of the overall rail system contemplated by the 1976 Act. Within the Title VIII program the States are afforded broad flexibility as to the method they choose to resolve their local freight service problems.

With respect to the status of funding, all 32 States outside the Northeast Region, with 4 exceptions, Alaska, Florida, Iowa and Nebraska, had applications for planning approved as of May 16, 1977. The remaining 4 States have requested extensions or their applications until May 30, 1977. I anticipate that the applications for these 4 States will be approved by that date.

In the Northeast Region, all eligible States, except one (West Virginia), have had State Rail Plans approved and are participating in the project phase of the program. As of May 9, 1977, obligations for these projects exceeded $60 million.

For the Committees evaluation of the burdensome project process, we have submitted with these responses a typical State Rail Plan (Indiana) and a planning work statement (Kentucky).

We stand ready to assist the Committee and staff in any way possible and appreciate the concerns of the Committee in reaching solutions to the rail problems facing the States and the Nation.

Very truly yours,

CLIFFORD ELKINS, *Director.*

Senator LONG. Next we will call Mr. Harry J. Breithaupt, vice president and general counsel of the Association of American Railroads.

STATEMENT OF HARRY J. BREITHAUPT, JR., VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS, WASHINGTON, D.C.

Mr. BREITHAUPT. Let me say for the record that my name is Harry J. Breithaupt, Jr.

I guess that the main message I have to give to the subcommittee is that the railroad industry hopes that this hearing is only the first of as many as are necessary to address the various problems that have developed in implementation of the 4–R Act and have continued despite enactment of the 4–R Act.

The 4–R Act was signed into law February 5, 1976. This act, which was amended in October 1976 in several respects by the Rail Transportation Improvement Act, represents a wide ranging attempt to address the problems of the railroad industry. The changes and reforms contained in that act are being and have been implemented, primarily by the ICC and to a lesser extent by the DOT. These changes have not been fully assessed, absent some accumulation of experience by the railroads affected by them, but we believe they represent an important step forward if implemented in accord with the intent of Congress. At this point the railroads believe this implementation has fallen short in some respects thereby thwarting that intent.

Enactment of the 4–R Act marked a fundamental change in the Federal Government's approach to railroad regulation. Previously, almost all the provisions of the Interstate Commerce Act consisted of restrictions upon the business operations of the railroads and other common carriers. But the 4–R Act came about in circumstances fundamentally different from those which attended earlier regulatory laws—a steady 20-year decline in the financial condition of the railroad industry which had left a number of large and small railroads bankrupt, had caused a crisis in the Northeast requiring massive Government financial assistance, and had made outright nationalization a serious possibility.

Rather than placing new restrictions on the railroad industry, the 4–R Act instead placed comprehensive restrictions on the ICC's own

regulatory powers, and directed the Commission to "encourage" and "assist" the railroads in achieving increased earnings which would be comparable to those in other sectors of the economy.

The 4–R Act's provisions on regulatory reform and related matters were based explicitly on Congress recognition that the railroads had lost their monopoly in freight transportation and had become only one struggling part of a highly competitive transportation industry. The changes were also based on the intent of Congress that the railroads be financially self-sustaining in the private sector and not be a burden on the Federal Treasury.

While the procedural standards of the Interstate Commerce Act were largely retained, the ICC was instructed to decide contested cases within strict time limits, to improve on its cost-finding procedures, to permit and encourage railroads to institute demand-based rates and separate rates for distinct services, and to assist the railroads to attain adequate revenue levels. In order to revitalize the railroads, the DOT was required to administer the Federal loans and loan guarantees authorized for the railroads, to develop procedures and standards for local rail service assistance to the States for lines which would otherwise be abandoned, and to report to Congress on future railroad financing needs and methods.

The ICC and the DOT were directed to submit separate reports on the success of the 4–R Act's ratemaking reforms in furthering the development of an efficient and financially stable railway system in the United States to assist Congress in determining the need for further statutory revisions.

Quite simply, the railroad industry has been disappointed with certain aspects of the implementation of the 4–R Act's provisions. We think that any fair evaluation of the ICC's many new regulations under the 4–R Act must reach one conclusion upon which the Commission, the railroad, and shippers would all have to agree: 1½ years after Congress first substantial effort at regulatory reform, the railroads today are subject to regulation which in certain respects is more extensive, complex, and costly than before. To the extent the 4–R Act reforms were intended to reduce and simplify railroad regulation, they have so far failed to achieve those goals.

Some of the problems confronting the industry that cried out loudest for solution had to do with ratemaking. The railroads cannot survive unless they have the freedom and flexibility to adjust their rates more promptly as economic conditions change and sound business judgment dictates.

The Congress surely recognized this in enacting section 202 of the 4–R Act, which is the keystone of Congress reform of rate regulation. That section contains provisions designed to enable railroads to lower and raise rates in response to competitive forces and also eliminates railroad maximum rate regulation whenever a carrier lacks market dominance.

Under section 202, Congress ordered the ICC to establish "standards and procedures" for determining whether a railroad possesses market dominance and expressly directed that these rules be designed to permit a "practical determination without administrative delay."

You have already alluded to another problem we have, the inadequate implementation of the statute on the part of the Department of

Transportation. Despite the urgent necessity of getting Federal money to the railroads for the purposes for which it was intended, by way of loans or loan guarantees, here we are 1½ years after the statute was enacted and very little, if indeed any, of this Federal money has been made available by the DOT for the purposes for which it was intended by the Congress.

Let me say, Mr. Chairman, that we do look forward to coming back before this subcommittee when things have resolved themselves to the extent that we think we can say something that will be helpful to the Congress. Much of the testimony this morning, particularly that just preceding my appearance, had to do with the branch line abandonment problem. We understand that a separate session of this subcommittee will be devoted specifically to that subject matter. We intend to supply for the record our views in connection with the views that have just been expressed to you as well as views that we may have on those few provisions of the bill that address that subject, and on any other features of the branch line abandonment problems that seem desirable to bring to your attention.

I think you very much for this opportunity, Mr. Chairman.

Senator LONG. Let me thank you for your statement, Mr. Breithaupt.

I really feel that it is a travesty the Congress has sought to do something, to modernize and improve the railroads, and that so little has happened. I am not against the DOT. I want to see them all do very well. I think we need to do something about this. And I would like to see the varying modes of transportation work together more effectively in order to achieve the overall purpose and to put each of them into a private category where we think they ought to be.

The railroads are trying now, I believe, to try to make more efficient use of their manpower. And I believe they are in for a tough negotiating session. And it is the position of management that they are being required to use more manpower than they think is necessary.

Mr. BREITHAUPT. The appropriate notices have been served, and that is one of the issues before the negotiators.

Senator LONG. Now one way or the other, we need to find ways to encourage the railroads to do everything they ought to be doing. And one way we can find some potential, is a lot of revenue will be raised by the energy bill that we are going to pass in this Congress. I am talking about the one that has to do with the taxes. I, for one, don't think it serves much purpose to put a tax on somebody and give the money back to them.

It seems to me that it makes a lot better sense to put that money into ways to make better use of energy or ways that would help us to produce more. One of the things that could be done is to provide more effective rail transportation systems.

Mr. BREITHAUPT. There have been proposals in that regard, that we espouse and that I think should be advanced before your committee at the appropriate time, if indeed they have not already been advanced.

Senator LONG. Well, we will look forward to seeing you over there in that subcommittee, or else another spokesman for your industry, because there are various areas where something ought to be done. But one thing we perhaps ought to try to do something about, the

amount of taxes that the States levy on railroads, roadbeds. That is one of the burdens on your industry that is not shared by the waterway industry, and it is not shared by the trucking industry. And if we did it, if we did provide some relief, I suppose we would have to provide some way to, as in revenue sharing, to compensate the States for the fact that they might lose their source of revenue.

But that is one of the areas where we might provide some relief to the industry.

I didn't ask the previous panel of witnesses, but the thought occurs to me that if the States didn't want the railroad to abandon a line, they ought to be willing to take the tax off of it.

Mr. BREITHAUPT. I am glad to hear you say that. We have been doing some thinking along those lines. And it may well be that one of the ways in which the Congress could afford relief to the railroads would be to excuse them from the taxes to which you refer. But you refer again to the very real problem about what the States will do if that comes about. Revenue sharing might be an answer.

Senator LONG. We will take a look at it. That is the one thing where I would think if you did something about it, you could hardly call it a subsidy for the rail industry. You just put them on the same basis as the others. The others are not paying a tax on the roadbeds. And the railroads are. If we equalize that one feature, how much money is involved in that, about $1 billion?

Mr. BREITHAUPT. I do not have that figure at hand. It is a lot of money, though.

Senator LONG. Would you mind providing that for the record? It is less than $1 billion. But it is a lot of money.

Mr. BREITHAUPT. I will do that, Mr. Chairman.

Senator LONG. Thank you very much.

Mr. BREITHAUPT. Thank you, Mr. Chairman.

STATEMENT OF HARRY J. BREITHAUPT, JR., VICE PRESIDENT AND GENERAL COUNSEL, ASSOCIATION OF AMERICAN RAILROADS

My name is Harry J. Breithaupt, Jr. I am vice president and general counsel of the Association of American Railroads (AAR), with headquarters in Washington, D.C. The railroads which are members of this association operate 96 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States.

I appreciate the opportunity to appear before you today on the effectiveness and implementation of the Rail Revitalization and Regulatory Reform Act of 1976. The railroad industry hopes that this hearing is only the first of as many as are necessary to address the various problems that have developed in implementation of the 4–R Act and have continued despite the enactment of the 4–R Act.

The 4–R Act was signed into law February 5, 1976. This Act, which was amended in October 1976 in several respects by the Rail Transportation Improvement Act (Public Law 94–555), represents a wide-ranging attempt to address the problems of the railroad industry. The changes and reforms contained in that Act are being and have been implemented, primarily by the Interstate Commerce Commission and to a lesser extent by the Department of Transportation. These changes have not been fully assessed, absent some accumulation of experience by the railroads affected by them, but we believe they represent an important step forward if implemented in accord with the intent of Congress. At this point the railroads believe this implementation has fallen short in some respects thereby thwarting that intent.

Enactment of the 4–R Act marked a fundamental change in the Federal Government's approach to railroad regulation. Previously, almost all the provisions

of the Interstate Commerce Act consisted of restrictions upon the business operations of the railroads and other common carriers. But the 4–R Act came about in circumstances fundamentally different from those which attended earlier regulatory laws—a steady 20-year decline in the financial condition of the railroad industry which had left a number of large and small railroads bankrupt, had caused a crisis in the Northeast requiring massive government financial assistance, and had made outright nationalization a serious possibility. Rather than placing new restrictions on the railroad industry, the 4–R Act instead placed comprehensive restrictions on the Interstate Commerce Commission's own regulatory powers, and directed the Commission to "encourage" and "assist" the railroads in achieving increased earnings which would be comparable to those in other sectors of the economy.

The 4–H Act's provisions on regulatory reform and related matters were based explicitly on Congress recognition that the railroads had lost their monopoly in freight transportation and had become only one struggling part of a highly competitive transportation industry. The changes were also based on the intent of Congress that the railroads be financially self-sustaining in the private sector and not be a burden on the Federal treasury. While the procedural standards of the Interstate Commerce Act were largely retained, the Interstate Commerce Commission was instructed to decide contested cases within strict time limits, to improve on its cost-finding procedures, to permit and encourage railroads to institute demand-based rates and separate rates for distinct services, and to assist the railroads to attain adequate revenues levels. In order to revitalize the railroads, the Department of Transportation was required to administer the federal loans and loan guarantees authorized for the railroads, to develop procedures and standards for local rail service assistance to the States for line which would otherwise be abandoned, and to report to Congress on future railroad financing needs and methods. The Commission and the Department of Transportation were directed to submit separate reports on the success of the 4–R Act's ratemaking reforms in furthering the development of an efficient and financially stable railway system in the United States to assist Congress in determining the need for further statutory revisions.

Quite simply the railroad industry has been disappointed with certain aspects of the implementation of the 4–R Acts' provisions. We think that any fair evaluation of the Interstate Commerce Commission's many new regulations under the 4–R Act must reach one conclusion upon which the Commission, the railroads and shippers would all have to agree: a year-and-a-half after Congress first substantial effort at regulatory reform, the railroads today are subject to regulation which in certain respects is more extensive, complex and costly than before. To the extent the 4–R Act reforms were intended to reduce and simplify railroad regulation, they have so far failed to achieve those goals.

Some of the problems confronting the industry that cried out loudest for solution had to do with ratemaking. The railroads cannot survive unless they have the freedom and flexibility to adjust their rates more promptly as economic conditions change and sound business judgment dictates. The Congress surely recognized this in enacting Section 202 of the 4–R Act, which is the keystone of Congress' reform of rate regulation. That section contains provisions designed to enable railroads to lower and raise rates in response to competitive forces and also eliminates railroad maximum rate regulation whenever a carrier lacks market dominance. Under Section 202, Congress ordered the ICC to establish "standards and procedures" for determining whether a railroad possesses market dominance and expressly directed that these rules be designed to permit a "practical determination without administrative delay."

Had the Commission heeded Congress mandate, it would have created a balanced set of market dominance standards and procedures reflecting the competitive realities of surface transportation. Instead, the Commission has adopted a series of "presumptions" that market dominance exists. The railroads, joined by the Department of Justice, have objected strongly to the Commission's ruling. The presumptions represent a virtual repudiation of Congress' decision to emphasize competition as the best regulator of price. The Commission, in an effort to retain control of railroad rates, has simply refused to follow the Congressional mandate and has instead based its regulations on the false premise that the rail industry is as monopolistic as it was 90 years ago.

The importance of the market dominance proceeding to the health and welfare of the railroad industry cannot be emphasized too much, and the frustration that the Commission's decision has brought cannot be ignored. We are, of course, challenging the Commission in Federal Court,[1] and the Department of Justice has joined us by confessing error on the part of the government. The point is that this litigation should not have been necessary. In the last analysis, what is most needed today is a change in the Commission's regulatory philosophy, a change which would recognize, as the Congress had in enacting the 4–R Act, the fundamental transformation in competitive realities and in the trend of government economic regulation.

While the Commission's market dominance proceeding is, from the rail industry's perspective, that agency's most glaring failure in implementing the intent of Congress to pursue regulatory reform, there has been a similar failure on the part of the Department of Transportation in one of its major responsibilities under the 4–R Act. That responsibility involves the allocation of loans and loan guarantees under Title V of the Act. The Federal Railroad Administration has only recently issued final regulations relating to applications for preference share financing under Section 505 of the Act. Admittedly, FRA's task was complicated by amendment of Title V by the Rail Transportation Improvement Act, but that amendment was necessary primarily because of the expressed intention of DOT to severely restrict allocation of the loans and guarantees. The point is that the 4–R Act was enacted on February 5, 1976, and here it is July 25, 1977, and little or no financial assistance has been provided.

Despite the implementing agencies' failures, the railroads view the 4–R Act as a good beginning toward meeting the basic problem that confronts the industry today as it has for many years now. That problem can be summed up in two words: inadequate earnings. Twenty years ago—in the early 1950's—the Interstate Commerce Commission found that net earnings and rates of return for the railroad industry were substandard and inadequate. At that time the average rate of return was barely 4 percent. In retrospect, those years of substandard earnings now look good. The average rate of return on capital has not been as high as 4 percent since 1955, while the cost of money has soared. Earnings in 1974—the best in ten years—produced a return of 3.45 percent on net investment. Earnings in 1975 and 1976 have not been nearly so high; 1.20 percent in 1975 and 1.49 percent in 1976.

If railroads are to have the capability to meet the needs of the future, they must be able to raise the capital funds required to renovate, modernize, and expand their production facilities to meet the enormous demands that will be made of them. The only way to provide such capability is through a climate that allows the industry to earn an adequate return. That climate does not exist today. Regulations by the Interstate Commerce Commission is not, of course, solely to blame for these problems of the railroad industry, but it shares a significant part of the responsibility.

Although this hearing has been called primarily to discuss the 4–R Act, I believe it is appropriate to mention here other regulatory problems faced by the railroad industry. What is generally regarded as one of the most significant regulatory problems is the fact that the burdens of regulation do not fall equally upon other transport modes with which railroads compete. Railroads are fully regulated by the ICC but their principal competitors are not. While so-called for hire or common carrier truckers and water carriers are regulated, they account for less than half of the traffic moving by each mode and do not compete with railroads as directly as their unregulated counterparts. It is private and exempt trucking operations, accounting for about 55 percent of truck ton-miles, and private and exempt water carriers, accounting for over 90 percent of the traffic on rivers and canals, that provide the most serious competitive challenge to the railroads and that are completely exempt from onerous ICC regulation. Further, not only do private truck and water carriers escape the burdens of ICC regulation which fall on the railroads, they also escape common-carrier obligations.

ICC regulation is costly to the railroad industry. The very process of regulating means that many commonplace decisions which are made unilaterally by the managers of unregulated industries must instead be argued out "in court" by

[1] C. A. No. 76–2048, Atchison, Topeka & Santa Fe Railway Company, et al. *v.* Interstate Commerce Commission and the United States of America (in the U.S. Court of Appeals for the District of Columbia Circuit).

railroads. Approval of proposed changes can be subject to significant delay if the opponents of those changes take advantage of all the opportunities that "due process" affords them. As just one example, we estimate that the railroad industry lost about $1.5 billion between 1967 and 1975 from delay in obtaining general rate increases that were eventually approved by the Commission.

I appreciate this opportunity to present our views on the 4–R Act and related matters. The railroads hope that this hearing will be used to lay the foundation for oversight hearings at a later date when additional time and experience should enable development of a more specific presentation by the industry.

Before closing, however, I should like to address one provision of S. 1793, the "Railroad Improvement Act of 1977," also a subject of this hearing.

Section 5(b) of that bill would amend Section 20(3) of the Interstate Commerce Act with regard to prescription, by the Interstate Commerce Commission, of a uniform accounting and reporting system for railroads, and more particularly as to determination of rail carriers' cost in connection therewith. We support the proposed amendment provided it be made clear, through the legislative history or otherwise, that the Commission will not be authorized to require the regular reporting of data in order to obtain costs particularized for less than system operations.

Other provisions of S. 1793 also deal with the branch line program. Our views on those provisions will be supplied for inclusion in the record of the further hearing which we understand the Surface Transportation Subcommittee will hold on "Title VIII State Rail Assistance Programs" and related matters.

Senator LONG. Next we will hear from Mr. Thomas S. Carter, president, Kansas City Southern Lines.

We are happy to have you here, Mr. Carter.

STATEMENT OF THOMAS S. CARTER, PRESIDENT, KANSAS CITY SOUTHERN LINES

Mr. CARTER. Thank you, Senator Long.

As you know, my name is Thomas S. Carter. I have provided a formal statement, but I will not read it in today in order to save some time. I would appreciate your including it in the record.

First, I want to compliment you, the Senate and the House, for recognizing that the railroads have a problem.

Second, I want to compliment you for attempting to do something about it.

At this time KCS is a profitmaking organization. We have been upgrading our railroad, and we are generally attempting to improve our facilities.

We are getting heavy in the hauling of coal. We are actually hauling western coal passing through Louisiana into Texas for the power companies.

I might mention that KCS is not a land-grant railroad. We have never received any land, and we are not to be considered in the same light as the western carriers that are so called or designated as land-grant railroads.

We feel that the railroads are the backbone of the transportation in this country today. And the time is not too far off where the Nation will need the railroads even more.

Experts have indicated to us that gasoline will be very scarce in the next few years. And if the railroads did not exist, they probably would have to be invented in order to solve this energy crisis.

Nearly all of the railroads are having a struggle today just to stay in business. We have to rehabilitate our own rights-of-way and rolling

stock with funds we generate ourselves. We must continue to install the latest types of equipment in order to stay viable. We are having difficulty in showing a profit, and moneys that ordinarily would be paid to stockholders are going in for the improvement of our facilities.

We did hear Mr. Breithaupt of the A.A.R. make his statement. As far as KCS is concerned, we certainly endorse the position of that organization. We take no exception to his remarks.

We do have three or four points that we do want to highlight, all of which were covered in my prepared statement.

First of all, the ratemaking reforms in titles II and III of the act have not actually produced what they were intended to produce. I won't go into the details, but I would say that this is one area that certainly needs to have some attention given.

Second, with respect to the so-called freedom granted to the railroads to raise and lower rates under certain conditions, actually that has not panned out to be quite what it was originally intended by the Congress.

Third, the financial assistance portion of the act has not panned out to be what was originally intended. The railroads have difficulty in securing capital for rehabilitation, for improvements and other expenditures. Actually, there is more regulation with respect to our acquiring moneys for making this work. As a result of this, we have not seen any improvement in the interest rates. We have actually seen more regulation with which we must comply.

We feel that there should be some emphasis given to the imbalance between the various forms or various modes of transportation. It might be wise even to consider asking the Office of Technology Assessment to study what the real costs are because each time we get into one of these discussions, there are a number of problems and a number of differences of opinion as to how much subsidies are going into the various modes. And I think that in order to properly be able to assess and have the honest feel of costs, there should be more study and more emphasis given to that particular subject.

Finally, the 4–R act generated more paperwork and more studies, and frankly except for the carriers in the Northeast, it has provided very, very little benefit to the rail carriers in the Northeast. ConRail, Amtrak, and most carriers that are bankrupt or near bankrupt are really the only ones that are receiving financial assistance or moneys so far.

In order for the railroads to continue the role in the transportation of goods in this country they must stay solvent. We have got to stay solvent in order to maintain our proper place. With this, we urge the committee to help us to do so. It is really in the national interest to keep the railroads solvent.

I have got another point that I would like to make. And that is, we respectfully urge you to be very wary in allowing any single product competitor, such as, the coal slurry pipelines to invade our service territory because they would in effect bleed off the cream of our business and yet we would still be expected to carry on with the common carrier services that we are legally obligated to perform.

That is all I have in the form of a statement. I certainly do appreciate the opportunity to appear before you to express my views. And I think it is marvelous that we have this opportunity in this great democracy of ours.

Senator LONG. Let me ask you a couple of things.

Now, do you have the potential of moving a lot of coal from some areas that you serve into the Shreveport, Baton Rouge, New Orleans area in the fairly near future?

Mr. CARTER. Absolutely, we have the capacity to carry four times as many tons as we are carrying today. We do have surplus capacity. Yes, and with little additional capital expenditure we could even exceed that figure.

Senator LONG. All right.

Now, can you tell me generally, where is this coal, and where would you be delivering it, basically, if the plans go somewhat in line with what the President has in mind?

Mr. CARTER. We are hauling western coal that originates on the Burlington Northern Railway. It moves down and hits KCS at Kansas City. We then haul it just north of Shreveport, La., from there we take it to Cason, Tex., to SWEPCO, that is South Western Electric Generating Co. They provide electric power for Northeast Louisiana, and parts of east Texas. These people are sitting right in the middle of an "oil patch," but their gas has been taken from them for other uses, so they are actually burning coal to produce electric power.

Senator LONG. They are using coal now?

Mr. CARTER. Yes, they are using coal now. And we are also negotiating with several of the petrochemical companies in the southern part of our territory along the coast of Louisiana for the movement of coal into that area. They can use coal for heat generation. Of course, they need the feedstock from the crude oil to go into their processes, but they are looking very seriously toward using coal to provide the heat necessary to make the process work.

We are also working with——

Senator LONG. Now what areas are involved, where are those plants, in what cities?

Mr. CARTER. Lake Charles, La., is the primary study area. We also have a study going on in Baton Rouge, La. area which is the location of the largest petroleum refinery in the world. We are actually studying the movement of coal into the complex for the purpose of providing the heat necessary to carry on that process.

We have other areas along the Mississippi River which as you know is very highly industrialized.

There are a number of chemical processing areas located in Louisiana and south Texas. Practically all areas that we serve are involved in detailed studies.

We have worked with these industries. We have had many meetings in an effort to try to help them solve their problems with respect to the use and transportation of clean coal. By clean, I mean coal that is relatively free of sulfur. It will not cause undesired dumping of sulfur into the atmosphere when burned in order to provide the energies that they need to keep their processes going and to keep them viable.

Senator LONG. I take it that will result in some modest increase in air pollution because you can't clean up the coal like you can with gas; is that correct?

Mr. CARTER. That is my understanding, yes. But it will be very modest because the coal only has two-tenths of 1 percent sulfur. So it is a very small amount going in the atmosphere.

We serve another coal burning powerplant in the State of Missouri that has a very sophisticated scrubber. By that, I mean they clean all of the sulfur out of the discharge into the atmosphere. But it is energy intensive, I am not saying it is economical at this time, but they are doing a great job of eliminating the sulfur from the stack gas.

Senator LONG. I see.

Now, of course, you are not able to—even without the sulfur problem, is it correct to say that you are not able to completely eliminate the pollution?

Mr. CARTER. That is true. They can't completely eliminate all of it. But they are using special equipment in the stacks, and it is removing over 90 percent of the particulant is being removed from the discharge.

Senator LONG. Are you in the black right now?

Mr. CARTER. Yes, sir. We are making a profit.

Senator LONG. I hope that your people will be up before the committee testifying when we talk about these various bills that offer this potential, particularly the Tax Reform Act.

Now can you tell me, how much State and local taxes does your railroad pay on its roadbeds?

Mr. CARTER. I can't give you the exact figures. I should be prepared to—it is very substantial. The tax in the various States is very, very substantial. It is in excess of $1,650,000 per year in the six States in which we operate.

Senator LONG. I wish you would provide that for the record.

Mr. CARTER. I will.

[The following information was subsequently received for the record:]

On July 25, 1977, I testified on our experience with the 4–R Act and commented on railroad problems. In discussing greater solvency of railroads, the Chairman suggested that tax relief, including the property taxes, and other financial aids should be considered.

In accordance with the request of Chairman Russell Long, I am attaching to this statement a breakdown of ad valorem property taxes paid by the Kansas City Southern Railway Company and its subsidiaries. Total payment for such taxes is now at the annual rate of slightly over $2.6 million. Obviously, it would be helpful if this burden were lifted. However, much of this revenue goes to local school districts and it is difficult to imagine how these units could forego this revenue. Consideration should be given to replacement of such revenues, perhaps by the federal government.

I also wish to address comments made by representatives of the recycling industries, specifically those pertaining to the San Antonio coal case. The statement was made that the railroads had been allowed a rate set at 127 percent of variable cost. Actually, the rate allowed was 136 percent of variable cost because it included most recent cost increases. The ICC also stated in that case, however, that the railroad was entitled to a rate which would recoup its fully allocated cost plus a fair return on investment. This rate would be far in excess of 127 percent, or even 136 percent, of variable cost. A petition is being prepared by the railroad (Burlington Northern) to reopen the San Antonio case to present a cost study showing its fully allocated cost.

The point is that a statement that all the ICC allows on coal is 127 percent of variable cost is patently false and misleading.

The issue of whether there is discrimination against recyclable material is one that should be left to the ICC. The Commission has recently, under congressional mandate, examined the issue. It is unfair and erroneous to compare freight rates for logs with waste paper or scrap steel with iron ore. After all, waste paper has far greater pulp content than wood and scrap steel has far greater metal value than raw ore. Consequently, waste paper and scrap steel are hauled at higher rates.

If, due to energy requirements transportation incentives should be granted to encourage recycling, then the taxpayers should subsidize these movements. It certainly would not be fair to place a further burden on financially beleaguered railroads, depriving these carriers of revenue in order to subsidize what appears to be in the public interest. Should the railroads collapse under these financial burdens, the taxpayers would be called on to subsidize nationalization.

We, therefore, urge the Subcommittee to scrutinize carefully the testimony for the National Association of Recycling Industries. To the extent to which it may be desirable to subsidize movement of materials for recycling, this should be done by someone other than the rail industry.

THE KANSAS CITY SOUTHERN RAILWAY CO.

[Statement of 1976 ad valorem property taxes, including subsidiary companies]

	KCS	L&A	A.W.	FS&VB	K&M	KCS trpt.	LANDA	LA&TT	Total	Nonoperating companies: Southern Development Co.	Nonoperating companies: Joplin Union Depot Co.
Missouri (includes MW&SC)	$636,845.52					$6.03			$636,851.55	$34,894.30	$6,873.87
Kansas	[1] 130,624.29				$9,827.78	8.58			140,460.65		
Arkansas (1976 taxes paid in 1977)	[2] 292,982.39	$13,220.49	$2,476.89			766.05		$22.94	309,468.76		
Oklahoma	364,625.18		1,782.50	$6,371.25					372,778.93		
Louisiana	[3] 412,358.63	[4] 519,489.63						1,635.83	933,484.09		
Texas	191,870.76	65,523.72				211.04	$996.38		258,601.90		
Total	2,029,306.77	598,233.84	4,259.39	6,371.25	9,827.78	991.70	996.38	1,658.77	2,651,645.88		

[1] Includes $231.73 billed to CMStP&P—joint track. $1,524.96 miscellaneous physical properties. $190.44 leased vehicles charged to account 53208.

[2] Includes $2,289.45 billed to tenants or lessees. $1,141.69 miscellaneous physical properties.

[3] Includes $22,174.60 billed to tenants or lessees. $2,006.32 miscellaneous physical properties.

[4] Includes $2,998.08 billed to tenants or lessees.

Senator LONG. I should think that is one area where we might be able to help your industry, when we have some funds available one way or another. If we could work it out with the States, if they wouldn't increase that tax, maybe we would find a way to help the industry reduce that burden of property taxes on the roadbeds.

Mr. CARTER. We endorse that idea 100 percent. I think that if the taxes could be eliminated, or if the Government could assist the States in that particular area, it would go a long way toward solving some of the railroad problems and toward making the railroads viable.

Senator LONG. If we try to do something of this sort, with an annual appropriation, then that offers everybody the opportunity to get into the act. And by the time a bill goes through, you have some fellow with some new idea about, after all, the railroads could pay more, or maybe they had a good year, so they shouldn't receive this help or something of that sort.

So even though you have an authorization to spend the money to make good what the States would otherwise collect, the legislative process is not all that reliable.

Then when you put it over into the bureaucracy, where they are supposed to make a grant or spend some money for the purpose, you are running into the kind of thing we just heard, where the money has been available since February 1976, but so far, aside from the New England States, there hasn't been one dollar of it spent in the area where it will do some good.

They are spending all of this money for paperwork, discussions, conversations. We have plenty of that already. I think it is time we started putting in some rails, driving some spikes, doing something that would move some dirt around and improve the roadbeds, do something that means something to somebody, not just give them the invitation to spend money on paperwork.

I take it that you have had plenty of chances to spend money on paperwork. Isn't that correct?

Mr. CARTER. That is correct.

The paperwork has increased since the passage of the bill. And so far we have received no funds. I do endorse what you say. I think that you absolutely have this problem well defined. And I feel very encouraged, frankly, from what I have just heard.

Senator LONG. Well, it is a new area to me. I have been on the committee for a while. But I haven't had the responsibility to chair one of the subcommittees. But I just believe that with all the need there is to modernize and improve our rail system, to have an act where in so many respects nothing has happened.

After all that talk, all this testimony, and passing these bills, reporting to the people in the country that we have done something, then to turn around a year or two or three years later and say, nothing has been done. Nothing has happened except that industry has had the burden of filling out a lot of forms, and the State governments have had the opportunity to think about the matters and to send in some applications, speaks well for no one.

It is time we start thinking in terms of something we can do that will be effective, something that will move this Nation somewhere toward a better transportation system, particularly in the area where the need is very obvious.

96-474—77——6

Well, thank you very much, Mr. Carter.

President Carter, you are not the only President Carter, you know.

Mr. CARTER. Yes. Thank you, sir.

I will get that tax figure and get it to the committee as soon as possible.

Thank you again.

Senator LONG. Thank you.

[The statement follows:]

STATEMENT OF THOMAS S. CARTER, PRESIDENT, KANSAS CITY SOUTHERN LINES

My name is Thomas S. Carter. I am president of the Kansas City Southern Railway Company and the Louisiana and Arkansas Railway Company, commonly known as Kansas City Southern Lines.

KCS Lines is a profit-making organization, which has been upgrading its right of way and generally attempting to improve its physical facilities. It is heavily into hauling of coal and is working now to be able to keep pace with what we believe the future will offer us as a carrier of coal.

We know that railroads not only are the backbone of the transportation of goods in this country today, but that the time is not too far off when the nation will need us even more than it now does. Experts say that gasoline will become increasingly scarce in the next 20 years or so. Indeed, if railroads did not exist, they would have to be invented.

Yet, nearly all railroads are having a struggle today to remain in business. We must rehabilitate our right of way and improve our rolling stock. We must continue to install the latest equipment. If we do not, we will be unable to do the job in the years ahead.

We have difficulty in showing a profit because we have seen much of our business syphoned off to trucks and barges, both of which are highly subsidized. Meanwhile, what might be our dividends are going into improving our facilities.

I am aware that Mr. Breithaupt's statement on behalf of the Association of American Railroads dwells heavily on some of these points. We endorse the AAR statement, but I felt compelled to mention these things, too.

Moreover, Mr. Chairman, I am aware that the Congress attempted to help the railroads with the Railroad Rehabilitation and Regulatory Reform Act. As you know, among its stated purposes were to provide the means for rehabilitation and maintenance of physical facilities, improvement of operations and restoration of the financial structure of the railway system. Laudable as are those goals, our experience indicates that little, if anything, has been achieved toward reaching them, except with regard to the Northeast.

First, the rate-making reforms of Titles II and III have, for us, made rate cases more difficult than before passage of the Act. Congress tried to speed the process of Interstate Commerce Commission consideration of rate applications. Because of the shortened period allowed, the ICC has eliminated its initial reporting and simply issued final decisions. This action then eliminated any possibility of filing exceptions to evidentiary findings. That, in turn, makes appeals of decisions extremely difficult.

This already has resulted in a decision in which the Commission applied rate concepts to KCS Lines we had never seen used before. Yet, an appeal to the courts in this or similar cases would be of little, if any use, since the courts are reluctant to tamper with a decision of a so-called "expert body" unless there is clear legal error.

The Commission is understandably reluctant to ask Congress for any time extension in these cases because it was clear that Congress wanted to expedite them. Prior to the 4–R Act, the ICC asked the parties in a case for an extension, and usually got it.

Perhaps the Act should be amended so that the proponent of the rate could request an initial report and, under those conditions, the Commission would have more than the presently allotted 180 days to decide, or it would be empowered to ask the interested parties for additional time, as it would have prior to passage of the Act.

In any event, we believe the procedural "reforms" of the 4–R Act should be checked to see if they are actually expediting the flow of work at the ICC.

Second, there is an illusory freedom granted to railroads to raise and lower rates under certain conditions. Adjustments provided in Section 202(c)(2)(c) are of no use to us. The 4–R Act allows us to adjust rates only on that traffic which is subject to competition from other railroads or other modes. Rate increases on that kind of traffic would result in less business. In addition, unless the traffic on which the adjustment is to be applied originates and terminates on our own line, we would need concurrence of all lines involved in order to change the rates.

Third, there is Title V, the heart of the financial assistance portion of the Act. As administered to date, railroads which have pulled themselves back from the edge of financial disaster and are showing some profit cannot benefit from the loans and loan guarantees. Low interest loans are going to the poorest railroads.

Railroads have extreme difficulty in securing capital for rehabilitation, improvements and other expenditures. Interest rates force solvent railroads to cannibalize themselves because they exceed earnings rates. Yet, the practical application of Title V assistance has been that we are asked both to pay comparable interest rates to the private sector and to accept government restrictions to do so. We suggest that the Act should be amended to provide for lower interest rates or less restrictions, or both.

We suggest also that the Congress should face up to a competitive imbalance between what the government does for various transportation modes. We are pleased that the Senate has taken the first step toward user charges on barges. It might be wise to ask the Office of Technology Assessment to study what costs are attributable to each mode and to what extent these are subsidized. We have noted the difficulty in getting accurate assessments. Then, Congress could act to even things up in the transportation business. Then you might either make comparable grants to railroads or provide realistic user charges on barges.

Fourth, there is a problem in the manner in which the 4–R Act treats extensions of rail lines where no application has been filed with the Commission for the extension. When a railroad applies to the Commission for an extension, other railroads can intervene and there is a hearing. Yet, where there is an extension by one line into a place served by another and no application is filed with the ICC, that intervention is specifically denied. We believe that Section 801(e) should be amended so that we can take legal action whenever our territory is invaded by another railroad.

Finally, the 4–R Act has generated paperwork and studies with little benefit so far to carriers outside the Northeast. We may be more regulated now than we were before.

As I said at the outset, we know that the role of the railroads in the transportation system of our country must be protected. America needs railroads and will need them even more in the future, especially so as energy becomes more scarce. Railroads are energy efficient. We must be solvent if we are to fill our proper place. We urge this Subcommittee, therefore, to help us to do so—in the national interest.

On that score, we respectfully urge that you be wary of allowing single product competitors such as slurry pipelines to invade our service territories and skim off the cream of our business while expecting us to continue to provide common carrier service.

Sentor LONG. Next we will hear from Mr. Daniel Curll, director of transportation, New York Chamber of Commerce and Industry.

STATEMENT OF DANIEL CURLL, DIRECTOR OF TRANSPORTATION, NEW YORK CHAMBER OF COMMERCE AND INDUSTRY

Senator LONG. We are pleased to have you, Mr. Curll. We will be delighted to know what your thoughts are about this subject.

Mr. CURLL. Thank you. I am sorry I don't have a written statement. I will submit one afterward. I was included on the list at the last minute.

Senator LONG. Yes, sir.

Mr. CURLL. My name is Dan Curll. I am transportation director at the New York Chamber of Commerce and Industry, 65 Liberty Street, New York, N.Y. The chamber is a major voice for the region's business community, the largest chamber in the region and, since its founding in 1768, has had a major role in planning and implementing the area's transportation network.

Our membership consists of manufacturers, bankers, retailers, and transportation companies; in other words, both users and sellers of transportation services.

I am here today to describe to you some of the effects that the Rail Revitalization and Regulatory Reform Act of 1976 has had on New York and the tristate region. The act had two main thrusts, regulatory reform and the restructuring of the bankrupt railroads in the Northeast.

The regulatory changes sought to avoid bureaucratic intervention whenever competitive forces could achieve equally equitable results for shippers and carriers.

I do not intend to comment today on this aspect of the act, other than to note that the reforms must logically have been based on the premise of the existence of competitive rail service in each major region of the country.

The USRA's final systems plan selected the Chessie system—C. & O.–B. & O.—to provide a competitive alternative to ConRail in our area, using Erie Lackawanna and Jersey Central tracks. This part of the plan could not be implemented because of a breakdown in negotiations between Chessie and the railroad unions.

As a partial alternative, the USRA permitted the Delaware & Hudson to extend its service to Newark. However, the D. &. H. service to Newark is limited to intermodal—truck or flatcar—service.

Thus, ConRail now has a monopoly in our area. Currently, we are the only major city in the Nation that does not have several independent trunkline railroads providing service.

Why is this ConRail monopoly of concern to New Yorkers? ConRail is only 15 months old, but in that time the following events have occurred.

One. On the day it was founded, ConRail canceled certain rates on movements to Brooklyn, thereby favoring the New Jersey side of the region. It has long been understood that to prevent chaos, points within a metropolitan area should have equal rates on long-haul traffic.

Therefore, the port authority, the International Longshoremen's Association, and various Brooklyn interests made strong representations to ConRail to withdraw these cancellations. They succeeded—this time.

Two. ConRail owns a major classification yard at Selkirk near Albany, N.Y. Recently, traffic from Long Island and southern New England going to New Jersey, Philadelphia, and points south has been routed through Selkirk, rather than across the Hudson River at New York, as in the past.

Studies by the USRA and the New England Regional Commission indicate that carfloating rail cars across the Hudson at New York, while expensive, remains less costly than the all-land route via Selkirk for this traffic.

However, ConRail and the USRA have refused to even study this routing further. ConRail has the monopoly. Their refusal to consider this alternative may unnecessarily raise transportation costs for shippers throughout the Northeast and the South. Traffic will be diverted to trucks. More energy will be used.

Three. In 1963, the U.S. Supreme Court affirmed the concept of equal rates to east coast ports on import/export freight. This decision however, did not apply to containerized cargo, which had not yet become popular.

Today, 60 percent of New York's tonnage is containerized, and ConRail charges about $65 more to move a container between the Midwest and New York than the Midwest and Baltimore. Independent cost experts suspect that ConRail's costs to New York may actually be lower than to Baltimore.

An inland rail rate committee composed of public agencies, as well as civic, trade, and labor organizations, was formed last fall to work on this problem. ConRail has refused to discuss its costs with us because they see themselves as a private corporation. If competition existed, the shipper could use traditional purchasing agent techniques to get a fair rate. How can we construct a case against a monopoly operating under the 4–R Act's reformed regulatory rules?

Four. The State of New Jersey and the port authority of New York and New Jersey have suggested an expansion of the Delaware & Hudson, which would provide competitive service similar to that which was recommended for the Chessie in the USRA's final systems plan. This suggestion was made in a letter to Secretary Coleman in September 1976.

On June 22 of this year, Secretary Adams rejected this proposal because the D. & H. would be relying in part on State and Federal loans, just like ConRail.

In a parallel development, the USRA has conditioned its extension of further aid to the D. & H. on its withdrawal from the New York market completely, that is, from the intermodal service to Newark. It seems we have created a new monster—a Government-protected, privately owned monopoly.

The events I have described here are only the beginning of a process which will have profound impact on rail service in the Northeast. The act you are now reviewing has worked at cross purposes in our region. It has reinserted certain competitive activities into rail ratemaking, but simultaneously reduced the number of competing railroads.

A railroad without competitors, whether it is technically nationalized or not, becomes a public utility. The regulatory procedures become those appropriate to a public utility.

The New York business community wants competitive rail service into our area. But if we don't get it, we need appropriate protective mechanisms to prevent actions which may be arbitrary, biased toward other regions, or based on only a short-term profit perspective. Thank you.

Senator LONG. Thank you very much, Mr. Curll. We will have a further opportunity to consider this later, and we may submit questions to you later. Thank you.

Mr. CURLL. Thank you, Mr. Chairman.

[Whereupon, at 12:10 p.m., the hearing was adjourned.]

RAILROAD IMPROVEMENT ACT OF 1977

FRIDAY, JULY 29, 1977

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
SUBCOMMITTEE ON SURFACE TRANSPORTATION,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 5110, Dirksen Senate Office Building, Hon. John A. Durkin presiding.

Senator DURKIN. If we can get started.

STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM RHODE ISLAND

Senator PELL. I'm particularly supportive of sections 6(b) and 6(d) of your bill, which contains provisions of S. 1598, the bill I introduced to reduce requirements of States along the corridor to contribute $150 million for fencing in nonoperational elements in the Northeast corridor.

I'm delighted that 11 of our colleagues have joined in cosponsoring this measure, which we believe is needed. As the original Senate sponsor of the legislation, I am glad that construction on the Northeast corridor project is finally moving ahead.

However, I am concerned that the original intent of this legislation might not be met. It has become more and more apparent that this project will not achieve its hoped for success if two vital elements are missing, fencing and station improvements.

If trains are to be moving at 120 miles per hour through our Nation's most highly populated megalopolis, satisfactory fencing must be in place to protect those who live and work near the route, as well as train crews and passengers who have been subjected to increasing vandalism, rock throwing, sniping, and other dangers. Fencing would be a great help in preventing these attacks.

Because of enormous financial strains, the possibility of their raising $44½ million to match the Federal Government share is remote.

Another problem is the financial stress placed on the 16 municipalities who must come up with all or part of $105 million for their 50 percent of nonoperational station elements.

These aspects of the project are not just amenities, but are a vital link in its overall success, and in the future of high-speed rail in our country. If passengers are turned away at the station, all of this $1½ billion we are spending on the high-speed train will be wasted because they won't come back.

It is obvious in order to take the train, they have to have a suitable place in which to leave their cars and park. There must be suitable access to the railroad station, or there will be no business.

The future of high-speed rail is a national concern. Rail passenger service will be a godsend as we face an energy deficient future.

One weakness in President Carter's energy message was the absence of any reference to mass transit or railway passenger service. This approach you are following in this committee can do as much as any other single element in saving the use of petroleum products.

Inner city passenger trains get 15 times the passenger miles per gallon of fuel, according to very conservative statistics.

The Northeast corridor improvement project will determine in great part whether sizable capital expenditures are further invested by private and public sources.

You will remember, the committee recommended an authorization of $4 billion for this project. Because of other considerations and threat of veto, the sum was skimmed down to $1.6 billion. Now the additional $150 million I recommend will go beyond the present budget, but will go a long way toward assuring ultimate public acceptability.

In this regard, Mr. Chairman, I ask your consent to have inserted in the record a fuller statement giving the statistics involved and the cost to each of the States, as well as other supporting information.

Also along these lines, I wanted to express my own thanks to you for taking the interest you do in this project. It is long overdue. Its time has more than come. I remember 10 years ago I wrote a book called "Megalopolis Unbound." The point it made, problems it raised, are just as current today as they were when it was written in 1965.

Senator DURKIN. And more pressing.

Senator PELL. Right, because we haven't done a thing. About 8 years ago we were going from Washington to New York more quickly than we do today. In one case I had the time between Tuxedo Park and New York City; 7 years ago the trains were going faster than they are today.

If we give the people the service they should have, then we find people will take the trains. To my mind, any distance of 200 miles or less should be traveled by railroad. If we had adequate service, we would be pulling the people out of the skies and off the roads onto those corridors.

We would not have to contemplate building, as you know, another airport in our part of the country, which is going to be a controversial question when we do it. If you take the TEE in Europe, bullet train in Japan, both of which I have taken and seen how they operate, you realize people like to ride trains. They can ride trains. They save fuel.

In order to move ahead this way, we have to make a national commitment to do so. My own bleak assessment is that with the exception of yourself and a few others, we have not yet made the decision to really move in this direction.

We may have to wait more years—I hope not another dozen—before the crisis is so real and so apparent that we have no alternative but to give our people service somewhat equivalent to the kind they receive in other nations.

Good luck to you in passing this bill.

Senator DURKIN. Thank you. I appreciate your testimony and your taking the time. I know you have been interested in the problem long before I got here. My concern is, as you indicated, is one of the problems with the President's energy plan is that it doesn't give proper emphasis to the need for increased rail transportation.

Senator PELL. Doesn't even mention it. I hope what you are doing here can help fill that big gap.

Senator DURKIN. I for one would like to see high-speed trains from Boston to Washington, and then one also in the central corridor, from Milwaukee maybe, to Chicago, St. Louis, and then one on the west coast.

I think if we had those functioning and operating, they would pay for a substantial amount of the Amtrak deficit and provide the basis of a high-speed train network.

Senator PELL. When you see the map of the United States showing all of the high-speed corridors and megalopolises that are developing, you realize ours from New Hampshire to Richmond or from Boston to Washington, that those are being replicated in other parts of the country. What we do in this corridor will be an important example to the others. This will be the model.

Senator DURKIN. If we can show that a high-speed train from Boston to Washington will work, it won't take long to extend it to Maine and New Hampshire. There is no mass transportation and intercity transportation in New Hampshire.

Senator PELL. The technique of wheels and rails is not being fully developed. Track air cushion vehicles, other things being experimented with and used on an experimental basis in France, that is 20 or 30 years off.

But the ideas you have that can be advanced in this bill will move us to the final stage of steel wheels and rails before we move to the next fixed rail transportation system.

Senator DURKIN. Hopefully this is another start toward it. Long before I was in the Senate, I know you had been pushing for mass transit in the Northeast corridor. Many days as I have bumped the ground from Boston, even now, in an airplane, I was thinking we should have transit.

Senator PELL. You notice a little improvement, I think. I take the waker—which some call the sleeper—between Boston and here occasionally, but you notice that it is a little smoother now than it used to be. President Kennedy was interested in it because he used to take the waker frequently when he came down, when it was a sleeper.

Senator DURKIN. You mean the night owl?

Senator PELL. The night owl, night waker.

Another important point from the political viewpoint, I cannot understand why we don't recognize—is that these corridors traversed by these high-speed railroad services are composed of many electoral votes.

I pointed it out to President Johnson. The megalopolis corridor had one-fourth of the electoral votes in the United States. This is where the heavy populations and voting areas are. Yet for some reason we deny these people in the heavy areas who hold the balance of power,

theoretically, in an election, and we deprive them in their need for mass transportation.

Senator DURKIN. We have to do something about the vehicles as well, because the metroliner, the cars have deteriorated.

Senator, I don't have any further questions. I know you have a busy schedule. I look forward to your continued interest and support. We are not going to make it economically in New England. We are at the empty and expensive end of the energy pipeline, we have inadequate transportation.

In the long run, New Hampshire, New England, Rhode Island, is not going to make it economically, and will not solve its economic problems until we have a balanced transportation system. It was all desirable, but it is becoming an absolute necessity for us.

Senator PELL. As you know, as well as I do, there is something like 15½ complete circles that trains make between New Haven and Boston, indicating the track has to be straightened out there.

We still have grade crossings, and my own State is at fault there. These problems have to be worked out.

I thank you for your interest in this project, and I am delighted you have taken the helm of it. Thank you vey much.

Senator DURKIN. I appreciate your help. Thank you, sir.

[The statement follows:]

STATEMENT OF HON. CLAIBORNE PELL, U.S. SENATOR FROM RHODE ISLAND

Thank you very much, Mr. Chairman, I appreciate having this opportunity to testify before the Surface Transportation Subcommittee on behalf of S. 1793, the Railroad Improvement Act of 1977, and particularly on behalf of Section 6(b) and 6(d) of that bill.

As you know, these provisions were included in S. 1598, a bill I introduced on May 24, 1977, with the cosponsorship of eleven of my colleagues—Senators Roth, Weicker, Case, Biden, Mathias, Sarbanes, Ribicoff, Williams, Chafee, Javits, and Heinz. Sections 6(b) and 6(d) would amend the Railroad Revitalization and Regulatory Reform Act of 1976, in order to eliminate certain matching requirements in funding of station and fencing improvements in the Northeast Corridor.

Under title VII of the 1976 Railroad Revitalization Act, the Northeast Corridor Improvement Project was created in order to establish, within 5 years, regularly scheduled and dependable intercity rail passenger service between Washington and Boston. The statutorily mandated time for these trains—2 hours and 40 minutes between Washington and New York, and 3 hours and 40 minutes between New York and Boston—each with appropriate stops—should offer an excellent alternative to crowded vehicular traffic in our Nation's most densely populated corridor.

Although I believe that much faster trains and more frequent service will be necessary to meet the demands of our energy-deficient future, I am nevertheless pleased that these steps are being taken to upgrade corridor rail service at this time. Special credit should be given to Secretary Adams who personally took steps to insure that construction work would start on schedule this spring and to Kenneth Treve Sawyer, general manager of the Northeast Corridor Improvement project, who has exercised extremely sound judgment and leadership over all of this massive effort.

Mr. Chairman, I take special pleasure in observing the progress in this program, for I believe it was my legislative efforts from 1962 through 1965, along with the personal interest of Presidents Kennedy and Johnson, that led to the demonstration projects in the Northeast Corridor—the Metroliners and Turbo trains which proved that the public would readily return to rail passenger service, if the service were fast, reliable, comfortable, courteous and safe. For example, Metroliners were introduced into service by Penn Central on January 16, 1969, and ridership between New York and Washington increased 8 percent the

first year. The Penn Central carried more than 2 million passengers on that route during its first 2 years of operation. Revenues increased nearly 50 percent in 1969 over the previous year. The TurboTrain experiment, carried out on a very limited basis by the Federal Government, handled more than 60,000 passengers between Boston and New York in its first year of operation (beginning April 8, 1969) and was termed quite successful. Ridership in the Corridor has continued steadily upward since that time.

I also take particular pride in this effort, because many of the advantages of rail travel in our Nation's urbanized corridors, that I forecast in my 1966 book, Megalopolis Unbound, are now becoming a reality.

During the years since that time, several members of this body gave tremendous effort to bring the Corridor Project into being: my former senior colleague, John O. Pastore, who exercised great leadership on the Commerce and Appropriations Committee; former Senator Vance Hartke, who chaired the Subcommittee on Surface Transportation for many years; and the very distinguished Chairman of the Senate Commerce Committee, Warren Magnuson. Because of their combined efforts, along with the work of many, many others, this complex legislation was brought through in excellent form. I believe that this project will spawn high-speed rail service in other highly populated corridors, and will be a God-send as our dwindling supply of petroleum necessitates reduced automobile use in coming years. The modest public investment to improve rail travel will reap decades of rewards, not only for those in the Northeast, but eventually all over the country.

My enthusiasm for the Northeast Corridor Improvement Project is, however, mingled with a very deep concern that there may be a stumbling block to its successful implementation. Of particular concern is the fact that the eight states and the District of Columbia which comprise the Corridor are having substantial difficulty in meeting their 50 percent share of fencing and non-operational station elements required by Section 703(1)(B) of the 1976 Railroad Revitalization and Regulatory Reform Act (45 U.S.C. § 853(1)(B)).

The plight these jurisdictions find themselves in, Mr. Chairman, is real. Although they are enthusiastic supporters of the Northeast Corridor Improvement Project, they are in desperate financial straits. Meeting their 50 percent share of fencing and non-operational stations elements over the next few years will be an onerous burden, and in some cases impossible. The following figures illustrate the amount of money each state must raise, above and beyond already strained state budgets, in meeting its financial obligations under the Act.

[In thousands]

	Fencing	Stations	Total
Massachusetts	$3.9	$12.5	$16.4
Rhode Island	6.1	5.0	11.1
Connecticut	12.5	9.7	22.2
New York	2.5	2.5	5.0
New Jersey	6.1	17.5	23.6
Pennsylvania	5.0	6.7	11.7
Delaware	2.6	9.2	11.8
Maryland	10.8	13.5	24.3
District of Columbia	.35	14.2	14.55

Mr. Chairman, fencing and non-operational station elements are two crucial aspects of the Northeast Corridor Improvement Project. If trains are to be moving at speeds up to 120 miles per hour through the highly populated Northeast, satisfactory fencing must be in place to protect those who live and work near the route as well as train crews and passengers. Sadly, many States will be unable to raise the revenue necessary to construct such fencing. The idea for the Project was conceived by the federal government, yet it was, by necessity at the time, divided into federal and state funding shares. While the States in the region supported the entire Project, they were unable to offer financial backing for its completion. Nevertheless, they were saddled with a sizeable burden and are now straining under its weight.

Another dilemma is the financial stress placed on many municipalities in the region who must come up with the 50 percent share for non-operational station elements. These are elements in and around train stations, which do not affect the

direct operations of trains, but which are essential to the operation of adequate rail service. Parking lots, access areas to stations, access areas to interfacing modes of transportation and passenger and visitor services are a few examples of non-operational station elements. These facilities must be in place if the public is to be encouraged to use public transportation, and they are essential to the ultimate profitability of rail passenger service.

Yet if municipalities cannot provide their share, these vital elements will be missing and the entire project will suffer for many years. Mr. Chairman, this bill, if enacted, would provide the necessary federal funding to assure timely completion of the Northeast Corridor Improvement Project. Its success will have a tremendous impact on this nation's ability to meet its energy and transportation crises.

I hope this Committee sees fit to retain Sections 6(b) and 6(d) in S. 1793. The success of the Northeast Corridor Improvement Project and its implications nationwide rest on this legislation.

Also of tremendous concern to me, Mr. Chairman, is the absence of any provision in S. 1793 for mandatory minimum entitlements in the Title IV and Title VIII programs.

According to FRA calculations on October 18, 1976, there were 13 States receiving the 1 percent minimum entitlement on the Title VIII program. This however, may be changed substantially by the system map filing by the Nation's railroads. This gives at least some indication that about 22 States will fall into the minimum categories. Without such assurances of funding some small States, such as Rhode Island, would have no program at all. Rhode Island's mandatory minimum share would be $720,000 a year over the next 4 years. a sum absolutely necessary if the State's rail services are to be maintained: establishing a state rail plan, performing track work for State-owned lines, replacing small bridges along the State's waterways, establishing a program to deal with further ConRail abandonments.

These vital services must continue, but will not without the 1 percent minimum. I ask that a mandatory minimum share of 1 percent be provided in this legislation so that the needs of 22 States will not go unrepresented.

Senator DURKIN. Chairman O'Neal?

You can proceed in any way you find more comfortable. Your entire statement will be printed in the record, and proceed in any way you wish.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY ALAN M. FITZWATER

Mr. O'NEAL. We have a lengthy statement which I won't go through here.

We also have a summary statement which I think I would like to read, if you don't mind, just to run through the major points we feel should be made.

I appreciate the opportunity you have provided for the Commission to come here and discuss the pending legislation. I want to thank you for permitting me to address both the title VIII State rail assistance program and the broader aspects of the 4–R Act today. With respect to title VIII State rail assistance programs, we have included, as I mentioned, detailed comments in the formal statement.

I will highlight some of the other points of the statement using S. 1793 as a guide.

We agree with the provisions of S. 1793 which would extend by an additional year the 100 percent Federal assistance for rehabilitation of subsidized lines. We believe this is necessary, because rehabilitation which should have been performed during the 100-percent Federal

assistance year could not be performed because of the slow startup of the program.

However, we do not recommend changes in the level of Federal assistance for the operating portion of the subsidy payment. The current requirement that a State contribute to the operating subsidy in the second subsidy year has resulted in benefits to the subsidized operations and in some cases it has resulted in less public expense.

We are concerned about the implications of the proposed cooperative assistance program included in S. 1793. As you know, Congress revamped the abandonment sections of the Interstate Commerce Act when it enacted the 4–R Act. A number of features were incorporated in the abandonment statute, including improved notice of abandonment and other features. However, the Commission's duty to determine whether public convenience and necessity to permit abandonment was left intact. Automatic cost-abandonment-type formulas of the type found in the bill, which do not allow independent review of the carriers' assertions, were rejected by the Congress in the 4–R Act. We recommend the subcommittee delete the cooperative assistance program provisions of S. 1793 in order to keep in effect the important safeguards of the present law.

I would like to turn now to one other subject raised by S. 1793. The Commission is represented on the board of directors of the U.S. Railway Association by its chairman. Under present law I'm able to delegate that responsibility only to the vice chairman. The bill would remove this restriction against further delegation, and we believe that is a sound idea.

I would like to go a step further and propose that there is a real question as to whether the Commission should be represented on the USRA Board at all. The role of the board has changed considerably since the establishment of ConRail and implementation of the final system plan. Instead of a planner, USRA is now a financier, whose concern is the capacity of certain carriers to meet their financial obligations to the Government. Frequently, they review strategies that might be taken before the Commission. Many issues presented before the USRA Board must later be considered by the Commission. Consequently, as Chairman, I must often abstain from many important decisions that come before the ICC and the USRA. I don't think this is beneficial to either USRA or the Commission.

Senator DURKIN. You think that tie should be severed?

Mr. O'NEAL. Yes; I feel the Chairman's membership ought to be dropped from the Board.

I don't think the Commission is in a position to make much more of a contribution to the USRA Board. It could be made by the other members. Because of the potential conflicts, and because it places me in an awkward position on a number of issues, I think it would be better to have a clean separation.

Another feature of S. 1793 would change existing law under which the Commission is required to adopt a uniform system of accounts for railroads. It appears that the intent is to clarify the present law rather than make a substitute law. We don't believe a change in the law is necessary. In fact, we have already issued new accounting standards and petitions for reconsideration are now being filed. Should this pro-

vision, nevertheless, be enacted, we believe it should be made clear either in the statute itself or in the committee report that there is no intention to undo the efforts which the Commission has already undertaken.

Let me turn to a more general question posed by these hearings; namely, the implementation of the 4–R Act and the possible need for amendments to it. Here, again, we have submitted detailed comments in the formal statement.

The broad aim of the 4–R Act was to restore, maintain, and revitalize a viable railway system in the United States under private enterprise. To achieve this goal, Congress had three subsidiary purposes in mind. First, it sought to limit regulation to areas where it is clearly needed. Second, Congress intended that ICC procedures be speeded up and reformed. Third, Congress reaffirmed the approach earlier taken in the 3–R Act that sufficient funds must be provided to preserve and improve the Nation's rail system, but that planning and public participation must be an integral part of this process.

The effectiveness of the act should be measured against these basic purposes. We believe that the act does show great promise, but that it is still too early to measure its full effect.

I will explain why with a couple of examples. Many of the changes brought about by the act were in the form of new rules to be adopted by the Commission. This rulemaking process is not yet completed, which means the shape of the act itself cannot be fully determined. The Commission has adhered to the statutory time limits, but still some of these rules have yet to be implemented.

A related factor which counsels against premature opinions on the effects of the act is that the railroads are being cautious in their approach to the statutory changes. The 7-percent non-suspension zone in the act has hardly been used. We have thus far received only two rate filings under this section and one of those was apparently in error. While we think more could be coming in the future, certainly the carriers are not showing widespread interest in this provision. One of the reasons is that perhaps it may not give them any great advantage over the regular market dominance test.

The market dominance test, under which the Commission does not regulate rates in situations where effective competition is found to exist, is now in effect. Here, again, there have been few rates filed by the carriers under this provision. And assessment of its effectiveness is difficult.

We have a similar situation with respect to separate rates for distinct service and with seasonal, peak period, and regional rates. With respect to special rates to promote capital incentives, our rules become effective in June and two filings—both involving coal—have been received.

These examples give an indication of why it is difficult at this early date to assess the impact of the 4–R Act. It is true that there are areas where the effects of the new act have been felt. Suspensions of railroad rate proposals have been reduced dramatically. In the first 6 months of this year only 4 rate schedules were suspended out of 87 considered for suspension. This compares to 10 out of 92 during the same time frame last year and 75 out of 170 during the same time frame 2 years ago. Nevertheless, the total impact of the act is broader

and more difficult to determine than this. Therefore, we are of the view that it is too early to consider substantial changes.

Moreover, many if not most problems can be solved by changes in Commission rules after more experience is gained. The rulemakings, for the most part, are ongoing by the Commission, and we are prepared to modify the rules as more experience is gained.

With respect to rate bureaus under the new section 5b of the act, we are right now evaluating new agreements under the new, more stringent, statutory standards. We are taking a hard look at these agreements and so far we have accepted one and rejected one, and we have others under consideration.

We have a few brief remarks regarding title III of the act, which brought certain reforms in the procedures of the ICC applicable to railroads.

The two sections of title III that may merit attention are the rail public counsel provision and the provision governing Commission hearing and appellate procedures. Many people think that the public counsel concept is important, and we hope that the Commission, the industry, and the public can soon realize the benefits of the public counsel approach. Up to now we have had to improvise, using our bureau of investigation and enforcement in a public counsel role. For example, we used the Bureau in that role in the now pending *Trans-Alaska Pipeline* rate case.

Perhaps the section of title III which has had the most immediate impact on our operations is section 303, which relates to Commission hearing and appellate procedures. While we have been able to work with these changes, and continue to favor time limits and elimination of unnecessary appeals as tools to reduce regulatory lag, we have nevertheless encountered structural and interpretative problems with this section which may warrant changes. The longer statement has specific references to details of possible amending language.

Finally, I would like to discuss briefly the abandonment provisions in title VIII. Since the new abandonment statute and accompanying rules have been in effect for a short time, we can only give a preliminary view. The carriers' system diagrams were recently filed and we will soon be distributing a publication which shows on State by State maps the total number of lines affected. Applications under the new law are now being submitted. We have so far received +10 of these, and 6 of them have been granted. We continue to believe that Congress adoption of the changes in the law was sound and as time goes on our experience will bear this out.

That is the end of my statement.

I will be happy to answer questions, if I can.

I should say, accompanying me at the table here is the director of the rail services planning office, Alan Fitzwater.

He has done a lot of work on the line abandonment provisions and can maybe give us details, if necessary.

Senator DURKIN. I gather the thrust of your testimony is that you feel you need more time?

Mr. O'NEAL. I would say this: I think we have about 25 rulemakings under this act. While most of them have been completed and the rules are in effect, some are still pending. The act became law on February 5,

1976, and it has taken time to get the rules out. While the affected carriers and users of the system are beginning to operate under those rules, they haven't been in effect long enough to measure the impact.

We are required to submit an evaluation of the new rate provisions by October of this year, which we are working on right now. In general, I simply think the act needs more time to work.

Senator DURKIN. We ought to give it an opportunity to work before we change it in any major way.

Mr. O'NEAL. That is our position at this time.

Senator DURKIN. I gather you are opposed to the moratorium on abandonments?

Mr. O'NEAL. Yes.

Senator DURKIN. Recently we are in a difficult spot. We have the President talking about changing the industry boilers to coal and in the Northeast that is a dream, unless they are going to bring coal in by the C5–A or bring it in by sea to Portsmouth and transfer it by truck. There isn't adequate rail transportation to get enough coal contemplated by the President's program.

Isn't abandonment going to wrong direction? Shouldn't we be saving the decrepit ties and the right-of-way?

Mr. O'NEAL. I don't think we can make a blanket statement that all lines should be preserved. The way the system is set up, the carriers are required to submit ahead of time their plans for abandoning lines. They have to submit their maps in various categories of lines. Category 1 are those lines they plan to abandon definitely. Category 2 are those lines they are studying for abandonment. There is opportunity under the statute for local communities to provide financial assistance for the maintenance of lines that are about to be abandoned or which the Commission has determined should be abandoned.

The Commission is required to look at the impact of line abandonments—to look at the impact on communities which are users of the system.

We propose—and S. 1793 so provides—that money be made available at an earlier point in time than when the Commission has decided the line should be abandoned.

There is opportunity for money to be made available to maintain lines early in the process. There is plenty of opportunity for the communities to provide for continuation of service. I think under this system you are not likely to lose service that shows much promise for the future.

Senator DURKIN. One thing that concerns me, if you abandon a line and a State doesn't pick it up, then you may very well lose the right-of-way. You have people talking about converting them to bicycle paths, and what have you.

Then the cost of getting—if we are wrong, and taking into consideration the fact that you say the act hasn't had time to work, should we allow any abandonments until we have given the act time to work?

Mr. O'NEAL. There is a provision in the act now requiring the Commission to give communities or any interested party a chance to obtain right-of-ways for different uses and it could be preserved this way.

If a right-of-way is lost, then instituting service thereafter could be expensive. There could be a loss of a lot of public moneys and private moneys as well. I think, though, you have to strike a balance.

Moreover, I believe the act has generally done a good job in striking the balance.

We have suggested changes and there are changes proposed in S. 1793 which, I think, provide a greater opportunity for maintaining the service, but I think you have to weigh the various factors. There definitely is an impact on the carriers, if the service is expensive to them over some branch lines. Maybe I should mention too—Alan Fitzwater just pointed this out to me—that under section 810 of the 4–R Act, the Secretary of Transportation is to establish a rail bank program to maintain for future use lines that have been abandoned. Maybe Mr. Fitzwater will make more comments on that.

Mr. FITZWATER. I don't want to expand on the rail bank concept, but there are a number of situations where abandonments are actually supported wholeheartedly by the local communities.

There are many situations where there is little or no traffic now and there are community projects underway that literally require removal of the tracks before the project can be completed. There are other situations where new highways are going in and would have to be rerouted if the railroads weren't abandoned. Actions under the program were basically of this nature in the first 6 months of the program. Most of the cases were wholeheartedly supported by the local community and they wanted service stopped for whatever reason. In some places they wanted to make bike paths. In some cases they wanted to pave the downtown streets without railroad tracks.

Senator DURKIN. That was before the declaration of the moral war. We have a different set of circumstances since April 20.

What is in the rail bank?

That has not—it is a good idea, but it hasn't gotten beyond the idea stage, has it?

Mr. O'NEAL. The authority exists. That is what we are pointing out. I am not sure if any action has been taken.

Mr. FITZWATER. Maybe that is a question that could be asked later when the FRA is up here.

Senator DURKIN. It is my information that nothing has happened.

Do you have any indication when the President is going to appoint the public counsel?

Mr. O'NEAL. I don't have an indication at this time.

I might say that we are concerned about how we can best utilize or bring to bear this kind of input into cases of the Commission.

We have started preliminary work on possibly doing a jerry-rig job within the Commission, but nothing final along those lines has really been done yet.

And actually I think before we did anything, I would want to get a better idea from the White House as to what their plans are.

Senator DURKIN. You hear a lot of arguments and discussion as to why the American railroad has declined.

We could spend the next 2 weeks on that subject.

From our vantage point do you have anything different to say?

Mr. O'NEAL. In looking at the railroad industry, you have to look at different segments of the industry.

I think you have to look at it regionally. Just this last week the Union Pacific Railroad and Southern Railway reported record earn-

ings. I wouldn't say they are in sad condition. They are in very good condition at the present time.

Other railroads, particularly those in the Northeast—and obviously their condition caused the enactment of the 4–R Act—are in pretty sad shape. Some carriers in the Middle West are in the same condition or approaching that condition.

I think there are a number of factors that have caused this change. For one thing, the adjustment in the economic conditions in the Northeast has had a real effect on the railroads.

The change in the character of traffic in the Northeast, the fact that an interstate highway system makes it possible for the motor carriers to be competitive, particularly on manufactured goods traffic, has had an effect. The railroads have not been able to compete with the motor carriers in that respect. The motor carriers are offering very fast service. It is generally pretty reliable. Much more reliable than the railroads. So the railroads have had to fall back on the bulk commodity traffic basically.

Now this, combined with the fact that the general condition of the economy in the Northeast has not been expanding and is not as expansionary as some other parts of the country, has had an effect.

The fact that the South is a growing area, management of Southern Railway has been an aggressive management——

Senator DURKIN. They have been unusually capable, haven't they?

Mr. O'NEAL. They certainly look good when you look at the bottom line. There is no question about that.

Senator DURKIN. This committee is tied up with airline deregulation. Some people think we will be tied up with truck deregulation maybe next year.

There is criticism that the regulatory layer has compounded the problems of the railroad carriers.

Do you foresee any move toward deregulation of the railroads?

Mr. O'NEAL. I think the Congress has taken significant steps toward deregulation in the railroad industry with the enactment of the 4–R Act. The carriers have more flexibility in the rate setting. However, not everybody is happy about that, particularly a lot of the shippers that use the system.

Senator DURKIN. No; I have met with them.

Mr. O'NEAL. So it cuts both ways. I think when you move away from regulation, what you are saying is that private enterprise will, in the marketplace, result in benefits—will result in a transportation system that will have some competition within limits. The goal, however, is to channel that competition for public ends.

Transportation is a vital part of the economy. It is the circulatory system of the country, and it is essential to the operations of all other businesses. It is also the system by which everybody in this country moves from place to place, instead of moving in private automobiles. So I think what we are talking about is what is the proper balance between regulation and competition.

We are now engaged in reviewing that balance at the Commission. We just received a report from a special task force that I set up in June. They have given 39 recommendations for adjusting the regulation of motor carriers. We are starting to move on those. We have taken

up three of them in a conference last week and we will take up three more next week.

We intend to have some field hearings on a number of these recommendations, my view being that the system of regulation of transportation affects a lot of people. We ought to have practical input before we make any dramatic changes in the system. So we are going to go out and seek out ideas from the people who are directly affected by the regulation of transportation.

Senator DURKIN. There seems to be a split. The FRA in its testimony indicates that the local rail assistance program has been just a stopgap. The States feel it is a way of preserving lines and revitalizing the rail industry.

Where do you come down in that split?

Mr. O'NEAL. We don't always agree with everything that the FRA does. I guess we would tend to support the States' point of view in this area.

Senator DURKIN. Do you support proposals such as those in some of the House bills to give the ICC the power to authorize another railroad to operate over abandoned lines and over other lines if the——

Mr. O'NEAL. To give a railroad which is a nonowner to operate over an abandoned line? Yes, we do. We have supported that procedure.

Senator DURKIN. I for one—my personal view is as important as the Interstate Highway Act was—wasn't that labeled "national defense"? It had national defense stuck in the title somewhere in the policy statement.

I think it is just as important that we restore the railroads in this country from an economic point of view, potential military point of view. And we are going to have to pay dollars. It will take some tax money.

But the breaks we give to the airlines and the breaks we give to the competing forms, I would like to see—of course, we haven't been able to get too much support for this, but we would like the railroads to turn over their railroad beds to the Government.

So far we have only five cosponsors and that seems to be a repeat for this year.

I want to thank you. I know you have a very, very busy schedule. You have many demands on your time. And I want to thank you both for taking the time to appear this morning.

Mr. O'NEAL. Thank you, Senator. We appreciate the opportunity to come before you.

Senator DURKIN. The record will remain open. We may have questions to submit in writing and also for any witness, you may have statements you want to add.

Mr. O'NEAL. We will be pleased to respond to any questions you want to submit.

[The statement follows:]

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, members of the subcommittee, good morning. I want to thank the Chairman and members of the Surface Transportation Subcommittee for giving the Commission this opportunity to present its views on the implementation of and need for amendments to the Railroad Revitalization and Regulatory

Reform Act of 1976 ("4–R Act"). I particularly want to thank the Subcommittee for permitting me to address both the Title VIII State Rail Assistance programs and broader aspects of the 4–R Act. I realize that this required adjustment in the Subcommittee's scheduling, and I appreciate the consideration you have shown the Commission in this matter.

In connection with the Title VIII assistance programs, I would first like to discuss the provisions of S. 1793, the "Railroad Improvement Act of 1977," and I will briefly touch upon two other recently introduced bills, S. 1835 (untitled) and S. 1836, the "Rail Service Protection Act of 1977." I will then discuss more generally the Commission's views on the 4–R Act.

AMENDMENTS TO THE DEPARTMENT OF TRANSPORTATION ACT

Section 2 of S. 1793 proposes to amend section 5 of the Department of Transportation Act, which contains the funding provisions for the National branch line subsidy program. Section 5 of the DOT Act was enacted by section 803 of the 4–R Act.

Paragraphs 2(a) (1) and (2) change the subsidy funding years to coincide with the new Federal fiscal year. Prior to the recent change in the Federal fiscal year, the National subsidy funding years coincided with the fiscal year. We believe that changing the appropriate dates again to coincide with the Federal fiscal year will help avoid confusion and lead to improved planning. Accordingly, we support this change.

In addition, we recommend that the Federal participation provisions of both the National and the Regional subsidy programs be modified to permit an additional year of 100 percent Federal assistance for rehabilitation of subsidized lines. This would require amending section 402(a) (1) of the Regional Rail Reorganization Act of 1973 (the "3–R Act") in addition to amending section 5(g) of the DOT Act. We believe this is necessary because rehabilitation which should have been performed during the 100 percent Federal assistance year could not be performed because of the slow start-up of the programs and the difficulties experienced in executing leases with the trustees of the bankrupt railroads. As a result, much necessary rehabilitation and maintenance was not performed, despite the Congressional intent that some of this rehabilitation and maintenance should have been performed under 100 percent subsidy.

We do not, however, recommend any change in the level of Federal assistance for the operating portion of the subsidy payment. We believe that the current requirement that a State contribute to the subsidy in the second subsidy year has resulted in many beneficial modifications to the subsidized operations. For instance, several States have successfully switched from Conrail to short line railroads as operators of subsidized branch lines, resulting in the same service being provided at significantly less public expense. Absent the requirement that the State provide a portion of the subsidy, this beneficial result might not have occurred.

The Commission also supports section 2(a) (3), which would allow the States which provide in-kind benefits to the subsidized operator to carry forward the "unexpended" portion of the in-kind benefits to subsequent subsidy years. The Commission also recommends that the language of section 2(a) (3) be added at the end of section 402(a) (2) of the 3–R Act to provide a similar change to the Regional subsidy program.

In addition to the in-kind benefits provision of section 2(a) (3), this section also provides that maintenance and rehabilitation projects are to be reimbursed at the level of Federal participation which was applicable at the time the project was initiated. This would be consistent with normal government financial control procedures which provide that once a commitment of funds has been made, the funds are obligated against the appropriation in effect at the time of the commitment.

Under the current FRA regulations for the Regional program, only that portion of a project which was completed prior to April 1, 1977, was eligible for 100 percent reimbursement. If the provision set forth in section 2(a) (3) had been in effect in the Region, the 100 percent Federal share would have continued until each approved project was completed. The Commission supports the inclusion of this provision in both the Regional and National subsidy programs.

Sections 2(b) and (2) of S. 1793 make a substantive change in the nature of the National subsidy program. A similar change is made in the Regional subsidy program in sections 4(g) and 4(h). In each case, the formula for determining

each State's entitlement to subsidy funds would be broadened to include consideration of those lines listed on the railroads' system diagram maps which are candidates for abandonment. Currently, only those lines already abandoned are so included. Thus, the opportunity to subsidize a line has often passed before a State becomes entitled to funds which could have been used to subsidize the line. The proposed change, we believe, could lead to a more accurate assessment of the individual States' needs for subsidy funds.

These sections would also permit the application of subsidy funds to projects on lines included on the system diagram maps as candidates for abandonment, but only for rehabilitation and improvement projects. The present law, in general, only allows subsidies to lines which have received Commission authorization for abandonment. Some of the States involved in the subsidy programs have expressed serious concern about subsidizing only those lines which are so hopelessly unprofitable that they have been authorized for abandonment. These States believe that providing one-time assistance to a marginally profitable line, perhaps through rehabilitation, represents more rational planning than permanently subsidizing an unprofitable line which has been authorized for abandonment. The proposed change in eligibility for subsidy funds would allow such one-time rehabilitation assistance to be performed under the subsidy program.

Although eligible for rehabilitation funds, the system diagram lines are specifically excluded from receiving operating subsidies. We support this distinction because we believe that the payment of operating, administration, and management costs to a railroad for the operation of a line which the railroad is required by law to operate is not desirable. The Commission supports the proposed changes in the entitlement and eligibilty provisions of both the National and the Regional subsidy programs.

Section 2(c) of S. 1793 must be viewed together with sections 2(f) and 5(a) to understand the implications of the proposed "Cooperative Assistance Proposal" program. The Commission is extremely concerned about these provisions, because they appear to be contrary to the intent and the public interest provisions of section 1a of the Interstate Commerce Act, and to reduce the concept of "public convenience and necessity" to a profit and loss calculation by the carrier.

These sections provide that a railroad which incurs a financial loss on a line, measured on an avoidable cost basis, may propose to the State that, in return for a 90 percent subsidy payment, the railroad will not file for abandonment of the line. However, if the State does not offer to make such a payment within 90 days after the railroad makes its proposal, the Commission would be forced to issue a certificate stating that the public convenience and necessity permits abandonment of the line, regardless of the facts of the case.

This proposed "Cooperative Assistance Proposal" appears to vitiate the provisions of the Interstate Commerce Act which provide for an orderly process under which lines may be abandoned by railroad carriers. Section 1a of the Act provides, among other things, that lines likely to be abandoned by a carrier must be publicized in advance so that potentially affected parties will be aware of the railroad's intentions; that advance notice of an abandonment proposal must be given to all significant shippers and to the State transportation agencies; that persons opposing an abandonment have the right to express their opinions and positions and to have these weighed and considered by the Commission; and that the Commission is to decide whether or not to permit an abandonment on the basis of public convenience and necessity considerations.

The "Cooperative Assistance Proposal" program seemingly would allow circumvention of these protective features of the Interstate Commerce Act. This proposal would require the Commission to grant an abandonment without the present safeguards of the system diagram requirement, without notification to shippers, without giving shippers and other interested parties the opportunity to be heard, and without considering the public convenience and necessity. In fact, there would be no independent review of the carrier's assertions. The Commission recommends that the Subcommittee delete those sections of S. 1793 dealing with the Cooperative Assistance Proposal in order to keep intact due process and the public convenience and necessity aspects of the Interstate Commerce Act.

Section 2(g) would increase the annual authorizations for State rail planning grants from $5,000,000 to $10,000,000. The Commission supports this change, and wishes to point out that this represents a reallocation of funds already included within the total authorization of the subsidy program, and does not represent a new authorization for expenditures. We believe that additional funds for planning will result in the more effective use of the funds available.

AMENDMENTS TO THE RAIL PASSENGER SERVICE ACT

Section 3 of the proposed legislation would amend sections 303 and 402 of the Rail Passenger Service Act (RPSA).

Section 3(a) would amend section 303(d) of the RPSA, to allow another officer of Amtrak, in addition to the president, to receive compensation in excess of that provided for in level I of the Executive Schedule, but not to exceed $85,000. The Commission has no objection to this amendment.

Section 3(b) would amend section 402(a) by adding at the end of the third sentence the following phrase, "including reasonable adherence to the fastest practicable operations schedule." This section would strengthen the Congressional mandate that the Commission consider quality of service, including schedule adherence, as a major factor in fixing any payments by Amtrak to the operating railroads above incremental costs. The Commission wishes to point out that the changes proposed in this section are minor ones which reflect existing practice. In cases where the Commission has fixed the compensation which Amtrak pays a railroad for its services, the Commission has interpreted the present provisions, in essence, as they are being proposed in this amendment. In recent decisions the Commission has given consideration to the fastest practicable operating schedule when setting compensation under section 402(a). For example, June 1976, the Commission ordered that Amtrak pay the Texas and Pacific Railway Company $38,000 per month for having operated Amtrak's Inter-American trains between Texarkana, Ark., and Forth Worth, Tex., since March 13, 1975. This decision provided that $6,700 of the monthly payment would be contingent upon the railroad having an on-time performance rate of 80 percent during any given month. The decision also required that the schedules in question be reduced by 30 minutes. Consequently, we see no need to amend this section as proposed, although under the circumstances we would not object if Congress sees fit to adopt such an amendment.

AMENDMENTS TO THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Section 4 of the bill proposes various amendments to sections 102(16), 201(d)(2), 201(h), 201(i), 201(j)(4), 303(b)(6), 402(b) and 402(c) of the 3–R Act. These sections of the 3–R Act either originated in or were amended by the 4–R Act (Public Law 94–210), or the Rail Transportation Improvement Act (Public Law 94–555).

Section 4(a), (b), (d) and (e) propose to amend sections 102(16), 201(d)(2), (i) and (j)(4), respectively, by, in essence, replacing the words "Deputy Secretary of Transportation," "Vice Chairman of the Commission" or "Deputy Secretary of the Treasury" with the words "their duly authorized representatives." We have no objection to the proposed amendments as they are administrative in nature, and, indeed, if the Commission's representation on the United States Railway Association Board of Directors is to be continued, we believe such an amendment would be desirable. Similarly, we have no objection to section 4(c) of the subject bill which would reinsert sentence two to section 201(h) of the 3–R Act, which the Rail Transportation Improvement Act deleted.

ICC representation on the USRA Board, however, presents a broader issue which suggests that the preferable course would be to eliminate altogether our representation on the Board. As you know, it is the Chairman of the Interstate Commerce Commission who is designated by the 3–R Act as a member of the USRA Board of Directors. The role of the Board has changed considerably since the establishment of ConRail and implementation of the Final System Plan. Instead of a planner USRA is now a financier. As such its concern is with the capacity of certain carriers to meet their financial obligations to the government.

Frequently, USRA is now called upon to review strategies before the ICC. And many issues presented to the USRA Board must later be considered by the Interstate Commerce Commission. Consequently, as Chairman I am often in the position of having to abstain from participating in many important decisions which come before both bodies. This is at best awkward, and is not beneficial to the proper workings of either the USRA Board or the Interstate Commerce Commission. As a result, the Commission recommends that the Subcommittee amend the 3–R Act to remove the Chairman of the Interstate Commerce Commission from membership on the USRA Board of Directors.

Section 4(i) would provide that States eligible for funds under the regional subsidy program could combine their entitlement amounts to be applied toward

a subsidy project in one of the States which would be beneficial to both of the States. Since there does not appear to be any reason to limit these funds to use solely within one State, the Commission supports this provision.

You will recall that I discussed section 5(a) earlier in connection with the proposed "Cooperative Assistance Program" and that the Commission opposes adoption of this section.

We are somewhat uncertain as to the purpose of the proposed amendment contained in section 5(b) amending paragraph (3) of section 20 of the IC Act. It deals with the Commission's authority to provide a uniform system of accounts for railroads. While many of the phrases have been restated in more concise language, there do not appear to be any substantive changes in the proposed amendment. A new uniform system of accounts for railroads was promulgated on June 24, 1977, to become effective January 1, 1978, pursuant to the 4–R Act. We are concerned that, if this amendment is adopted, it will be taken as a substantive change in Congressional policy and, therefore, will raise doubts about the validity of the recently adopted system of accounts. In any case, we do not believe this provision to be necessary.

Attached to this statement as Appendix 1 is a sheet indicating proposed technical corrections of S. 1793. Appendix B shows suggested changes in wording of the bill to accord with our recommendations included in this statement.

S. 1835

The Commission supports S. 1835, which would establish a mechanism for identifying the rail service needs of the agricultural industry. One of the difficulties inherent in any analysis of the national rail system is the identification of those rail lines which are essential to particular specialties within the overall "public interest." Recent, the Military Traffic Management Command identified the major main line corridors which are essential to the national defense and the access lines to installations, usually light density branch lines, which are essential to national defense planning. This information has been and will continue to be of value to the Commission in considering national defense needs in decisions.

A similar identification of the agricultural industry's needs could be of benefit to the Commission in its deliberations, and might also be of benefit to the Department of Transportation in the area of rail system planning.

S. 1836

Senate bill 1836 would establish an 18-month moratorium on railroad abandonments, after which the rail service continuation subsidy program would start again. The program would have a minimum 18-month period of 100 percent Federal assistance followed by one year periods of declining assistance reaching a level of 70 percent.

The Commission does not support S. 1836. It is our belief that this bill is a reaction to the system diagram plans filed recently by the railroads. These system diagram maps (which are required under new section 1a of the Interstate Commerce Act which was enacted by section 802 of the 4–R Act) are intended to provide public notice of the railroads' plans for line abandonments in the foreseeable future. There has been substantial reaction to these maps, often characterized by surprise that so many lines are abandonment candidates.

The Commission believes that it is important to point out that publication of the system diagram maps does not appear to have generated any movement toward mass abandonments, but has simply made public the existing level of abandonment activity in the Nation.

The Commission does not believe that a moratorium on abandonments would be beneficial. Such a moratorium would place a financial burden on the railroads (for which the railroads might seek compensation), and would not generate commensurate benefits to the public.

Although concerns about the timely preparations of the State Rail Plans were quite valid a year ago, the States have made considerable progress on these plans. All of the States have received planning grants from the Federal Railroad Administration and one-third of the States outside of the Northeast Region have indicated that their State Rail Plans will be completed this year. Only five States anticipate completing their State Rail Plans after July 1 of next year. The Commission believes that a moratorium is unnecessary since the State rail planning process is well underway.

It is important also to realize that certain desirable abandonments with strong public support would be prohibited under the proposed moratorium. The Commission receives some abandonment applications which have the full support of the communities involved. Often, a redevelopment project or a community use building is planned for the property on which a railroad is built. In other cases, the abandonment of a line of railroad eliminates the need to build an expensive overpass on a needed new highway being constructed over the railroad's right-of-way. A moratorium may not be beneficial in these instances.

For these reasons, the Commission does not support S. 1836.

I will now turn to the more general question posed by these hearings; namely, the implementation of the 4–R Act and the possible need for amendments to it. There is no doubt that the 4–R Act is the most important piece of legislation affecting transportation to be enacted in many years. The broad aim of the Act, as expressed by Congress in its declaration of policy, was to restore, maintain, and revitalize an efficient railway system under private enterprise. Congress sought to accomplish these goals in several different ways.

First, in Title II of the Act it undertook a major restructuring of the system of rate regulation applying to railroads in this country.

Title III effected substantial reforms of I.C.C. procedures, many of which were believed to be outdated and in some cases harmful to railroad management prerogatives.

Title IV reformed merger and consolidation procedures; Title V brought about railroad rehabilitation and improvement financing; Title VI implemented the Final System Plan for the Northeast railroads; Title VII implemented the Northeast Corridor Project; Title VIII effected numerous financing and regulatory changes designed to preserve and improve local rail services; and Title IX provided for the initiation of several studies to assist the Congress.

The effectiveness of the Act should be measured against Congress's basic purposes in enacting these extensive and widely varied provisions. As I stated earlier, its fundamental purpose was to preserve and revitalize a basically private enterprise railroad system. To reach this goal, three subsidiary purposes were in mind. First, Congress sought to limit government regulation to areas where it is clearly needed and to allow greater latitude to natural market forces and carrier management initiatives where possible. This purpose is most prominently borne out by the extensive revisions in rate regulation enacted by Title II, such as the adoption of a "market dominance" test and the 7 percent no-suspend zone.

Second, Congress clearly intended that ICC procedures be speeded up and reformed. The imposition of time limits on the Commission, and the elimination of certain steps in the administrative review process, are evidence of that.

Third, Congress reaffirmed the approach earlier taken in the Regional Rail Reorganization Act of 1973 ("3–R Act"), that sufficient funds be provided to preserve and improve the Nation's rail system, but that planning and public participation be an integral part of this process. The revised merger procedures in Title IV of the 4–R Act and the revised abandonment procedures of Title VIII are good evidence of that intent.

Looking at the 4–R Act from our perspective, we are of the view that it demonstrates great promise as a vehicle to achieve Congress's overall goal of revitalizing the railroad industry. In terms of the significance of the changes brought about, however, it is still new legislation, the full effects of which cannot easily be measured at this early date. Let me explain why.

First of all, many 4–R Act changes brought are in the form of rules of the Commission mandated by the Act. As you know, the Commission was required to conduct proceedings and to issue rules on a number of different subjects. Attached as Appendix 3 is an updated status report on these proceedings. Some have been completed and are in effect; some have been completed but are not yet in effect pending judicial review; and some are still pending before the Commission. This rulemaking process has not yet come to a conclusion which means, in effect, that the shape of the Act itself cannot yet be fully determined.

A second and related factor which counsels against premature opinions on the effects of the Act is the reaction of the railroads themselves. While numerous regulatory changes have been effected or are now being effected through the rulemaking process, the bottom line in many instances is going to be the attitude of carrier management. So far the evidence suggests that the railroads are being extremely cautious in their approach to the many rate revisions incorpo-

rated in Title II of the Act. While many of the effects of this Title are still under study by the Commission pursuant to the mandate of section 202(g), we can offer our preliminary assessments by citing a few examples.

One section 202 provision enacted is the seven percent no-suspend zone feature incorporated into new section 15(8) of the Interstate Commerce Act. Under this rule carriers are permitted to increase or lower rates, which "are not of general applicability to all or substantially all classes of traffic . . ." by 7 percent annually, except that the Commission may suspend them under provisions of sections 2, 3, and 4, or, in case of rate increases, may suspend them if "market dominance" is found to exist.

There have been only two rate tariffs filed under this provision, and the extent to which it may be used in the future is uncertain. Carriers have not shown great interest in the provision because of their expressed view that increased rates would be suspended on the basis of market dominance, or could not be effected because of competition. Further, the carriers contend that they have always had the option of reducing rates.

Inflation may be a major deterrent to the use of the 7 percent no-suspend zone. During periods of rapidly rising prices, railroads tend to rely on general rate increases, which are not covered by this section. If inflationary pressures were to subside, railroads might be more amenable to selective changes rather than applying for general increases with numerous individual rate "holddowns" and "flagouts."

Another example demonstrating that the effect of the Act cannot yet be fully determined is the new provision which relieves the railroads from regulation wherever "market dominance" is found not to exist. Market dominance in the Act is defined as "an absence of effective competition from other carriers or modes of transportation, for the traffic or movement to which a rate applies." The Commission's rule implementing this provision included three fact situations which, if present, would create rebuttable presumptions that market dominance exists.

The first presumption arises when the proponent carrier has 70 percent or more of the market; the second arises when the rate equals or exceeds 160 percent of variable cost; and the third arises when a shipper or consignee has made a substantial investment in rail-related facilities. The presumptions of market dominance are rebuttable by any relevant evidence.

Since there have been few rate filings by the carriers affected by this provision, and since those filed have been of limited scope, the impact is difficult to determine. Actual case experience so far under this provision, though scant, shows findings of market dominance are being made in a small proportion of cases. Few selective increase proposals have been suspended since the market dominance standard was enacted.

While the preliminary theoretical study data suggest that a significant proportion of traffic would be market dominant under the presumptions included in the Commission's rule, the rule in our view provides for protection from monopoly price control as envisioned by the 4–R Act and at the same time provides elasticity to make changes as conditions warrant. Thus, while the full effect of the rule cannot yet be fully assessed, we believe our rule to be a valid implementation of the legislative intent, and that the market dominance test will, over time, show its viability.

Another new rate provision brought about by the 4–R Act is that which encourages separate rates for distinct services. New section 15(19) of the Interstate Commerce Act provides, "in order to encourage competition, to promote increased reinvestment by railroads, and to encourage and facilitate increased nonrailroad investment in the production of rail services, a carrier by railroad subject to this part may, upon its own initiative or upon the request of any shipper or receiver of freight, file separate rates for distinct rail services."

It requires the Commission to establish, "by rule, expeditious procedures for permitting publication of separate rates . . . to encourage the pricing of such services in accordance with the carrier's cash outlays for such services and the demand therefor, and enable shippers and receivers to evaluate all transportation and related changes and alternatives." Our rule implementing this provision, Ex Parte 331, include procedural changes which are designed to encourage the separation of distinct services into separate rate categories. For example, the rules states special permission for publication of such rates will be granted whenever possible, and that proceedings involving separate rates will be expedited.

Railroads have always had numerous separate rates for distinct services, such as transit, diversion, reconsignment, protective services, etc. In our study of the impact of the ratemaking provisions, we are attempting to gauge the likelihood of expanding separate rates to insurance on lading, assigned cars, customized cars, expedited services, etc. Railroads have difficulty in agreeing to the establishment of separate rates, and competition tends to prevent the establishment of many otherwise possible separate rates. There are also problems of tariff publication.

In general, the railroads feel that there will be no substantial change in the area of separate rates in the near future. Since separate rates must be initiated by the railroads, the Commission can only play an encouraging role. We believe that our implementation of this provision encourages the establishment of separate rates to the degree possible, but it is still too early to tell what the full impact of this section will be.

The 4–R Act also requires the establishment of expeditious procedures for Commission review of seasonal, peak or regional rates. These procedures are to replace the conventional procedures and are designed to provide incentive to shippers to reduce peak period shipments by rescheduling; generate additional revenue for railroads; and improve utilization of cars, movements, level of employment, and financial stability of markets served by railroads.

The Commission's implementation of this section is contained in its new rules adopted in Ex Parte No. 324. The rule, like the law, is primarily procedural; however, it does contain major new substantive features.

First, shippers are protected from cancellation where they have made substantial investments to take advantage of the demand-sensitive rates, and, second, a railroad can cancel an unsuccessful rate on 30-days' notice.

Moreover, a particularly important feature of the new rules is a provision that the Commission will not suspend a cancellation of such a rate for three years under most circumstances. The reason this is important is that railroads have frequently objected to instituting special rates out of fear that would have difficulty getting rid of ones that do not succeed.

Our preliminary statistical data review shows that from 25 to 30 percent of all rail traffic is peak or seasonal in nature, and that this traffic is largely concentrated in the Midwest and West. Agricultural products (grain, fresh produce, and miscellaneous field crops) are almost entirely seasonal, fertilizer materials substantially seasonal, metallic ores 80-percent seasonal, stone and gravel 40-percent seasonal, and assembled automobiles 50-percent seasonal.

Elasticity studies indicate that a premium peak rate of 35 percent above off-peak rates could be effective in spreading out grain shipments. Comparable figures would be 10 to 20 percent on iron ore and 10 percent on gravel. Any increase would likely result in loss of fresh produce traffic.

These types of rates, while not unprecedented, hold new potential for railroads. Widespread establishment of the rates will probably be slow. Individual railroads are faced with different seasonal patterns and many of the rates will have to be joint rates. Railroads must make careful studies of the seasonal characteristics of traffic and demand elasticities before they can propose a rate rationally. If it is a joint rate, other carriers must concur and this could be difficult. In addition, it appears that marketing influences may exert greater influence than the incentives offered under this provision. World grain prices, for example, may be more influential to gain movement than seasonal rate incentives and almost no seasonal rate change applied to new automobiles would likely influence movement of autos.

There are also some potential procedural difficulties. Proposed increased rates are likely to be protested. If an investigation is instituted, carriers must submit justification statements. The data are quite different than normally required and this poses new challenges to carriers in meeting evidentiary tests. Probably the most important factor restraining the implementation of these rates is that it represents a substantial change in the ways railroads have traditionally priced traffic. Such changes will require considerable time for the carriers to adjust to a new system.

Another change brought about by Title II of the 4–R Act is reform of railroad rate bureaus, including such new featuers as a prohibition against bureau protest of carriers' independently filed rate proposals,[1] and a prohibition against bureau

[1] Bureau protests of member carriers' independent action proposals were prohibited in Ex Parte No. 297. Rate Bureau Investigation, 349 I.C.C. 811, 351 I.C.C. 437, recently sustained by the United States Court of Appeals for the Fourth Circuit in *Motor Carriers Traffic Assn., et al.* v. *United States, et al.*, No. 76–1329 (decided July 21, 1977).

participation in agreements with respect to single-line rates established by any carrier. The Commission has commenced, and in some cases completed the record and issued decisions in a number of proceedings relating to new bureau agreements under the revised standards of the new statute. As envisioned by the statute, both the Department of Justice and the Federal Trade Commission have participated in these proceedings.

One technical problem has emerged with respect to the new railroad rate bureau statute. The 4–R Act created a new section 5b limited to agreements among railroads. Section 5a, which now governs rate bureaus of other modes, was amended by deleting railroads from the definition of Part I carriers. The drafters, however, did not delete railroads from the classes of carriers which might propose an intermodal rate bureau agreement under section 5a(4). While we believe that we continue to possess authority under section 5a(4) to approve intermodal agreements, we suggest adding a new section 5b(4)(A), identical to section 5a(4), to remove any possible question about our jurisdiction to approve such agreements.

In general, the new rate bureau provisions appear to be working well, although the fact that the administrative process of approving new agreements has not been completed means that the full effects of this new provision cannot yet be fully assessed.

These few examples illustrate the problems which exist in attempting to assess the impacts of the 4–R Act in the area of rate regulation. This is not to suggest that there are no areas where the effects of the new law have already been felt. In the area of suspension of railroad rate proposals, for example, the more stringent standards implemented by the 4–R Act have dramatically reduced the number of rates suspended. In the first six months of 1977, only four rate schedules were suspended out of 87 considered for suspension. This compares to 19 out of 92 during the same time frame in 1976, and 75 out of 170 during the same time frame in 1975. In part, this may be due to changes in the quantum of proof required of protestants at the suspension level.

Nevertheless, the total impact of the Act is broader and more difficult to determine than this, and we therefore are of the view that it is too early at this time to propose substantial changes. The Commission and the industry are faced with new procedures and new ways in which to operate. Adjustments will likely have to be made eventually, but we do not believe they should be made on the basis of the present experience. Moreover, we should observe that many if not most problems encountered can be solved by changes in the Commission's rules after more experience is gained.

Let me now turn to Title III of the Act, which brought about certain reforms in the procedures of the Interstate Commerce Commission applicable to railroads. Some of the features of this Title have resulted in smooth transitions which have not caused any particular difficulty. In this category are such matters as:

The expansion of the Commission's discretion in the setting of the effective date of its orders (section 302);

The promulgation of revised rules of practice (section 304), which has been accomplished and became effective on July 19, 1977;

The revision of securities regulation so as to give the Securities and Exchange Commission concurrent jurisdiction over railroad securities matters (section 308). This is being accomplished by cooperative efforts between our Bureau of Accounts and the SEC;

The revision of the Uniform Cost and Revenue Accounting System (section 307), which is proceeding according to the schedule outlined in the statute; and

The law revision prescribed by section 312, which has already been accomplished in preliminary draft form and which is expected to be submitted to Congress in final form by the statutory deadline of February 1978 on regulation over the long range, we have encountered no substantial problems with their implementation so far and do not believe that they warrant particular attention by the Subcommittee at this time.

The two provisions of Title II which may merit closer attention are the Rail Public Counsel provision (section 304) and the provision governing Commission hearing and appellate procedures (section 303). As you know, the difficulty with the Public Counsel provision is simply that the Office has not been implemented because a Director has not yet been nominated by the President. A majority of the Commission continues to believe that a Public Counsel at the Commission is important, regardless of the particular form it takes.[2]

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[2] Commissioners Murphy, Gresham, and MacFarland do not share this view. Commissioner MacFarland would delete all references to Public Counsel in this statement. (See his opinion—Appendix (5)).

Accordingly, we are hopeful that action will be taken soon, so that the regulatory process at this agency can, for the first time, begin to realize the benefits of the Public Counsel approach. Up to now, we have had to improvise using our Bureau of Investigations and Enforcement in a Public Counsel role. The Bureau has performed such a function, for example, in the now-Pending Trans-Alaska Pipeline rate case.

Perhaps the section of Title II which has had the most immediate impact on our operations is section 303, which brought about numerous detailed changes to the Commission's hearing and appellate procedures. It provides, first of all, that whenever the initial disposition of a case is assigned to an Administrative Law Judge, Commissioner, employee board or division, the person handling the case shall complete all evidentiary proceedings within 180 days of assignment and submit an initial decision or report within 120 days after completion of the evidentiary proceedings. The Commission is empowered to void the requirement for an initial decision and to consider the matter directly if it involves a question of agency policy, a new issue of law, an issue of general transportation importance, or if the due and timely execution of the Commission's functions so requires.

If no appeal of an initial decision is filed within 20 days, or in such further period set by the Commission (not to exceed 20 more days), it shall become the order of the Commission unless stayed by the Commission for reconsideration on its own motion. The Commission or a division must consider and act upon all appeals from initial decisions within 180 days after the filing of the appeal. Employee review boards may perform appellate functions under this paragraph, except that they cannot decide appeals which may then be further appealed to the Commission.

There are no further appellate requirements imposed on the Commission; however, any party may petition the Commission for reconsideration and the Commission may reconsider the decision if a matter of general transportation importance, new evidence, or materially changed circumstances, is presented and may stay the effective date of such decision during consideration of the petition. Any time the Commission reviews a decision of the Commission or a division, it must complete its review and issue its final order within 120 days of the granting of the application for review.

Any of the above deadlines may be extended for a period of 90 days upon majority vote of the Commissioners, and the Commission is required to submit an annual report setting forth each extension. Furthermore, this section provides that in extraordinary situations, the Commission may grant a further extension upon agreement of at least seven Commissioners and upon a specific report to Congress concerning the reasons for the extensions, the anticipated duration, the issues involved, and the names of personnel working on the case. This section also preserves the Commission's right to reopen any proceeding at any time on its own motion on grounds of material error, new evidence, or substantially changed circumstances. Finally, all formal investigations initiated after enactment must be concluded with administrative finality within three years after institution, and within one year after enactment, the Commission had to conclude any investigation which has been pending for more than three years.

In our limited experience thus far we have basically been able to work within the provisions of section 17 and continue to favor time limits and elimination of unnecessary appeals as tools to reduce regulatory lag, we have encountered certain structural and interpretive problems with this section which may warrant changes. Among these problems are:

(1) The inclusion of the term "formal investigative proceeding" in section 17(14) of the Interstate Commerce Act as amended by section 303 of the 4–R Act limits the application of that section since the time limits specified there apply only to those proceedings. The intent, however, seems to have been to apply this time limit to all railroad proceedings. Therefore, clarifying language seems to be in order.

(2) Section 17(9)(h) of the Interstate Commerce Act as amended by section 303 provides that an order of the Commission shall be final on the date it is served. Taken literally, this language would mean that the order is final even if an administrative appeal is still available. Since the only evident purpose of this section was to make an otherwise administratively final decision final on the date served, rather than on the date entered, clarifying language seems to be in order.

(3) Under section 17(9)(b) of the Interstate Commerce Act as amended, exceptions to an initial decision may be filed within 20 days "or within such further period (not to exceed 20 days)" as authorized. In view of the fact that section 17(9)(e) allows 90-day extensions of any time limit, there is a question as to the meaning of the parenthetical phrase just mentioned. This problem could be solved by clarifying language which shows that for the extra 20-day extension mentioned parenthetically, there is no absolute 40-day deadline for extensions on exceptions. Alternatively, this problem could be solved by a provision that the 90-day extension period does not apply to the time for filing exceptions.

These are the kinds of problems which we have identified and are continuing to identify in our administration of section 17. Some of them are susceptible to administrative interpretation, but others may merit legislative change. We have attached as Appendix 4 to this statement some suggested amendatory language, together with discussions of the need for change.

I would now like to discuss briefly the abandonment provisions contained in Title VIII of the 4–R Act. These provisions significantly changed previous regulatory procedures, and, in our view, changed them substantially for the better. As you may know, the Commission full supported these changes, and has adopted regulations to give effect to the Congressional mandate. These regulations, promulgated in Ex Parte No. 274 (Sub-No. 2), Abandonment of Railroad Lines and Discontinuance of Service, reflect the Congressional intent, first of all, that the railroads must give widely expanded notice of their intentions to abandon rail lines. This is accomplished in various ways, one of which is to require that a complete system diagram be filed with the Commission which shows lines to be abandoned within 3 years and lines for which abandonment is under study. Moreover, under the Commission's regulations, these diagrams must also be served on State Governors and other State officials, published in local newspapers, and posted in stations on lines for which abandonment is slated or under study. Such advance notice, we believe, will greatly facilitate planning by all involved parties and assure that the public interest is adequately protected.

Once an abandonment application is filed, quite strict time limits are imposed upon the Commission to assure that decisions will be reached in a timely manner. If a decision is reached to allow an abandonment, there are stringent new conditions to be followed. Perhaps the most innovative and important of these conditions is that the abandonment cannot go into effect until interested persons have had an opportunity to offer financial assistance for the purpose of preserving the service. This provision is closely tied in with the 4–R Act's program of financial assistance for preservation of branch lines.

We believe the abandonment provisions of the 4–R Act are an unusually fresh approach to a very old problem, and one which has every likelihood of working well. It provides a cohesive approach to the overall problems of abandonments, which the Commission fully endorses.

Since the new procedures have been in effect for only a very short time, we can only give you our preliminary assessment of their effect. We believe that these procedures have combined adequate Federal financial assistance with adequate public input and planning within a regulatory structure that will produce expeditious but well-considered decisions. We feel that this combination can solve a multifaceted problem that in previous years was rarely, if ever, solved to anyone's satisfaction. We expect that in the near future we will be able to provide you with more concrete examples of the functioning of these provisions, which is not possible now since the railroad's system diagrams have only recently been filed and applications under the new law and regulations are only now being submitted. We have every reason to expect that greater experience under the new abandonment provisions will demonstrate that the course taken by Congress was the proper one.

In summary, the Commission is of the view that the 4–R Act is a sound and forward-looking law, and that our experience with it has been generally favorable. To some degree the effects of this law are not yet clear, and in most instances legislative changes do not appear desirable until more experience has been gained. The full impact of some of the Commission's regulations has yet to be felt, and the Nation's railroads have not yet reacted fully to the changes in the law. The 4–R Act overall was a necessary response to a difficult and complex situation, and we have every reason to believe that it will be beneficial both to the Commission and the rail industry over the long run.

While the users of the railroad system have not expressed unqualified approval of these changes—particularly with respect to the sharp decline in the number of suspensions of proposed rates—our view is that overall the effects of the law will be good. Should problems of a serious nature later become evident, we will be in a better position to recommend further changes.

Thank you for this opportunity to comment. I will be glad to respond to questions.

APPENDIX 1

S. 1793—TECHNICAL CORRECTIONS (CHANGES ITALIC)

Page/Line

Page 3 line 3: Should read: "(b) The first sentence of subsection 5(h) of the Department of Transportation".

Page 4 line 3: Should read: "the calculation of the numerator *or in the calculation of the denominator* of the fraction.".

Page 4 line 10: Should read: "on such properties *and* (2) *a reasonable return on the value of such line.*".

Page 4 line 24: Should read: "before the Commission; in which case, the eligibility for".

Page 5 line 18 and page 5 line 22: These should be consistent.

Page 6 line 14: Should read: "accordance with procedures approved by the Secretary, may,".

Page 11 line 10: Should read: "*or in the calculation of the denominator* of the fraction.".

Page 13 line 4: Should read: "(10) *and* (*11*) *thereof as paragraphs* (*11*) and (*12*); and (2) by adding the."

Page 13 line 21: Should read: "made, and that such valid financial assistance offer was *not*".

Page 17: There is no section 811 proposed to go with the amendment to the Table of Contents of the 4R Act.

APPENDIX 2

S. 1793—RECOMMENDED DRAFT WORDING CHANGES TO IMPLEMENT COMMISSION'S RECOMMENDATIONS

Section 2(a)(1)

Section 5(g) of the Department of Transportation Act is amended to read as follows:

"(g)(1) The Federal share of the cost of any rail service assistance program described in paragraph (3) of subsection (f) of this section shall be (A) 100 percent for the period beginning July 1, 1976, and ending September 30, 1978, (B) 90 percent for the period beginning October 1, 1978 and ending September 30, 1979, (C) 80 percent for the period beginning October 1, 1979, and ending September 30, 1980, and (D) 70 percent for the period beginning October 1, 1980, and ending September 30, 1981.

"(2) The Federal share of the cost of any rail service assistance program described in paragraph (1), (2) or (4) of subsection (f) of this section shall be (A) 100 percent for the period beginning July 1, 1976, and ending June 30, 1977, (B) 90 percent for the period beginning July 1, 1977, and ending September 30, 1978, (C) 80 percent for the period beginning October 1, 1978, and ending September 30, 1979, and (D) 70 percent for the period beginning October 1, 1979, and ending September 30, 1981."

NOTE.—The necessary similar change to the Regional Program is included with other changes in Section 4—Amendments to 3R Act.

Sections 2(a)(2) and 2(a)(3)—No changes.

Section 2(b)—No changes (see technical corrections).

Section 2(c)—Delete.

Section 2(d)—No changes (see technical corrections).

Section 2(e)—No changes.

Section 2(f)—Delete.

Section 2(g)—No changes.

Section 3(a)—No changes.

Section 3(b)—Delete.

Sections 4(a) through 4(e)—Remove references to the Chairman of the Commission.

New paragraph in section 4

"Sections 201(d)(2), 201(h), and 201(j) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 711, 711(h), and 711(j)) are amended by deleting the words "Chairman of the Commission" and "the Vice Chairman of the Commission" whenever they appear."

New paragraph in section 4

"Section 402(a)(1) of the Regional Rail Reorganization Act of 1973 is amended by striking out the last sentence thereof and inserting in lieu thereof the following: "The Federal share of the cost of any such assistance for the rehabilitation and maintenance of rail properties shall be 100 percent for the 24-month period following the date on which rail properties are conveyed pursuant to section 303(b)(1) of this Act. The Federal share of the cost of any such assistance for purposes other than the rehabilitation and maintenance of rail properties shall be (A) 100 percent for the 12-month period following such date of conveyance, and (B) 90 percent for the succeeding 12-month period."

New paragraph in section 4

"Section 402(a)(2) of the Regional Rail Reorganization Act of 1973 is amended by adding at the end thereof the following new sentences: "In-kind benefits which a State provides for any period in excess of such State's share of project costs for such period shall be applied toward such State's share in any subsequent period. The date of initiation of any maintenance, rehabilitation, improvement, or acquisition project shall determine the period from which rail freight assistance to which a State is entitled shall be provided for such project. Whenever the costs of an approved maintenance, rehabilitation, improvement, or acquisition project exceed the amount of rail freight service assistance to which a State is entitled for the period in which such project is initiated, the Secretary may provide assistance in any subsequent period to cover the costs of such project at the percentage level and from the Federal share established by this subsection such subsequent period.".

Section 4(f)—No changes.

Sections 4(g) and 4(h)—No changes.

Section 5(a)—Delete.

Section 5(b)—Delete.

Section 6—No comments.

APPENDIX 3

ICC rulemaking proceedings implementing 4–R Act

Section of act:	*ICC Proceedings*
Section 201	Ex Parte No. 322. The Commission developed rules, standards, and procedures for the expeditious conduct of proceedings pertaining to divisions of revenues cases. Order served July 30, 1976.
Section 202(b)	Ex Parte No. 320. The Commission established standards and procedures for making market dominance determinations, by final order served October 1, 1976.
Section 202(d)	Ex Parte No. 324. The Commission issued standards and expeditious procedures for the establishment of railroad rates based on seasonal, regional, and peak-period demands for rail service. Order served February 4, 1977. The Commission is required, by section 202(d), to submit to the Congress annual reports on the implementation of such rates.
Section 202(d)	Ex Parte No. 331. The Commission established expeditious procedures for permitting the publication of separate rates for distinct rail services, by order served February 7, 1977.

Section 202(g)	No Ex Parte Proceeding. Pursuant to this section the Commission and the Secretary are required to study the effects of the amendments of section 202 on the development of a financially stable and efficient railway system. Completion of this study and its submission to the Congress is required by October of 1977.
Section 204	Ex Parte No. 319. In this proceeding the Commission investigated railroad freight rate structures for the transportation of recyclable materials and competing virgin, natural resources. A final order was served February 4, 1977, but it has been appealed in court.
Section 205	Ex Parte No. 338. The Commission is presently conducting this rulemaking to promulgate reasonable standards and procedures for the establishment of adequate revenue levels. The statutory deadline for this is February 5, 1978.
Section 206	Ex Parte No. 327. This proceeding was initiated to develop standards and expedited procedures to promote the filing of capital incentive rates. The 4–R Act did not require such a proceeding, but the Commission felt it was appropriate. A final order was served June 8, 1977.
Section 208	Ex Parte No. 297 (Sub-No. 1). In this proceeding the Commission required the railroads to conform to the provisions of section 5b of the Act and file new or amended agreements with the Commission.
Section 209	Ex Parte No. 326. The Commission has proposed regulations in this proceeding to amend existing regulations to conform to the statutory time limits within which general increases in rates and charges must be transferred from master tariffs into the individual tariff of each railroad or rail ratemaking association.
Section 212	Ex Parte No. 334. This proceeding was instituted to revise the Commission's rules with regard to car service compensation.
Sections 303 and 309	Ex Parte No. 274 (Sub–No. 2). The Commission adopted regulations relating to the abandonment of railroad lines and discontinuance of service.
Section 305	Ex Parte No. 55 (Sub–No. 24). The Commission completed its initial proposed revised rules of practice, and forwarded them to the Administrative Conference of the United States. Following receipt of comments by the Conference, the revised rules were forwarded to Congress with a proposed effective date of July 19, 1977.
Section 307	Docket No. 36367. The Commission is in the process of revising its Uniform System of Accounts for Railroads.
Sections 402 and 403	Ex Parte No. 282 (Sub–No. 1). This proceeding to revise the Commission's current consolidation regulations was deemed necessary because of the amendments to section 5 of the ICA contained in the 4–R Act. Final regulations were served on February 17, 1977.

Section 903	Ex Parte No. 323. The Commission studied railroad conglomerates and other corporate structures and submitted the study to the Congress on February 4, 1977.

APPENDIX 4

SUGGESTED AMENDMENTS TO SECTION 17 OF INTERSTATE COMMERCE ACT AS AMENDED BY 4–R ACT

(1) Strike the parenthetical phrase (not to exceed 20 days) from section 17(9)(b).

Reason for change

The 20-day period for filing an appeal to an initial decision or report may not always provide sufficient time to prepare and file an appeal in complex matters. The framers recognized this problem and authorized the Commission or a duly designated Division, to allow an additional 20 days to file an appeal. Unfortunately, in constructing a maximum 40-day period for filing appeals, the framers ignored the inconsistent authorization of section 17(9)(e) which allows the Commission to extend "any time period set forth in this section" by 90 days.

We suggest striking out the questionable 40-day reference and removing the inconsistency to give us the opportunity to respond to legitimate requests for extra time to file appeals. This change would not affect our obligation to meet other Congressionally mandated deadlines. The intended benefits would run to the public. If, however, it is intended that there be a firm 40-day maximum period for appeal, a provision should be enacted to the effect that the 90-day extension period does not apply to the time for filing exceptions.

(2) Change the word "section" in the second sentence of § 17(9)(e) to "subsection".

Reason for change

As presently drafted, the authority in § 17(9)(e) to extend time limits by 90 days spills over to other parts of section 17. For example, the authority to extend may now be used to avoid the three-day deadline for completing formal investigative proceedings under section 17(14)(a) or to avoid the 10-day period of section 17(15) to respond to House and Senate oversight committees. The proposed change would eliminate these unintended opportunities.

NOTE.—If the size of the Interstate Commerce Commission is reduced, legislation reducing the size should include an amendment to section 17(9)(f)(1) changing the number "7" to "5".

(3) Strike the words "formal investigative" from the first sentence of section 17(14)(a). Repeal section 17(14)(b).

Reason for change

The words "formal investigative" narrows the class of cases which the Commission must complete within three years. There is no reason why all railroad cases should not be subject to the deadline.

The Commission has complied with section 17(14)(b) and it is no longer necessary.

(4) Strike the first sentence of section 17(9)(h) and substitute the following: "The service date of any final decision, order or requirement of the Commission, or of a duly designated division or employee board, is the date to be used to compute the time for filing any petition for judicial review of such decision, order, or requirement."

Reason for change

The first sentence of section 17(9)(h) directs us to disregard other provisions of the act and makes all orders of the Commission or a division final on the date of service. The purpose of the provision is to provide a date certain, other than the entry date of an order, to count off the days during which judicial review is available. Using the service date rather than the entry date maximizes the time available for appeal and avoids any problems caused by time lag between the entry date and the service date of an order.

Unfortunately, as presently drafted, section 17(9)(h) appears to confer an unintended administrative finality to agency orders which are not otherwise admin-

istratively final under section 17(9)(b)-(d). The amendment would solve this problem.

(5) Strike "date of the filing" and substitute "proposed effective date" in the fourth sentence of section 15(8)(a).

Reason for change

Ten months after the date of filing of a tariff includes the following time periods: (1) 30-day notice period before proposed effective date; (2) 7-month suspension period; and (3) two-month extension for making the decision. By using the filing date rather than the proposed effective date for counting the 10-month period, the drafters unintentionally subtracted one-third of the 3-month extension period for rendering a decision in complex matters.

The drafters' intention to use the proposed effective date rather than the filing date is explicit in the first sentence of section 15(8)(b). The proposed amendment merely corrects an error.

APPENDIX 5

JULY 26, 1977.

Memorandum to: CHAIRMAN O'NEAL.

Subject: Senate hearings on implementation of and need for amendments to the 4–R Act

I vote to approve the circulated statement subject to the complete deletion of the only full paragraph on Page 27. Although my opposition to the notion of a separate Public Counsel has been repeatedly stated, I feel it is now as good a time as any for the entire Commission to take another look at its continued "Johnny-one-note" endorsement of Section 304.

I find it inescapable to note that this once-fashionable idea has failed to catch on with any significant success in any part of the federal government in the years that have followed its conception. Although Public Law 94–210 pointedly required establishment of an Office of Rail Public Counsel within 60 days after its February 5, 1976 enactment, this provision has been just as pointedly ignored by two successive Presidents. The Senator most responsible for Section 304 is no longer in office and apparently there is no serious contender for the Directorship now under White House consideration. The futility of the Commission continuing to beat this dead horse otherwise known as "Public Counsel" in every piece of testimony concerning the 4–R Act is to me quite apparent. I commend it to you for your serious consideration.

ALFRED T. MACFARLAND,
Commissioner.

[The following information was subsequently received for the record:]

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., August 12, 1977.

Hon. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. LONG: It was a pleasure to appear before the Subcommittee on Surface Transportation of the Senate Committee on Commerce, Science and Transportation on July 29, 1977, to testify on the implementation of and need for amendments to the Railroad Revitalization and Regulatory Reform Act of 1976. Near the end of my testimony, Senator Durkin stated that my response to additional written questions might be sought. I have received these questions, and am pleased to submit the attached responses for inclusion in the record.

I have not responded herein to some of the written questions, since I responded to them orally at the hearing. Specifically, question number 1A was answered on page 124 of the written transcript, 1B on pages 126 and 127, 2A on pages 120 and 121, 2B on page 128, and 3C on page 128.

If I can be of any further assistance, please contact me.

Sincerely yours,

DANIEL O'NEAL,
Chairman.

Enclosure.

Question 1C. Do you see the future for a healthy rail system in built-up large main line companies with extensive branches, or in the creation of a new system based on limited main lines and extensive short branch-line operations?

Answer. A healthy rail system would most likely contain large main line companies with extensive branches. The eastern and western railroads which are presently profitable utilize this structure. Extensive main lines result in maximum uninterrupted movements, and the resulting maximum revenues. The railroad system should act like a production line with everything filtering in to one large movement.

Question 2C. Do you see any parallel between S. 1835, which focuses on analyzing and identifying rail lines essential to specialized industrial needs, and the view of state rail planning as an opportunity to rationalize local rail needs and decisions?

Answer. Yes. Both point toward the future economic growth in an area, and how it can be fostered by continued rail service. However, S. 1835 approaches the problem in a narrower perspective since it deals only with specialized industrial needs, rather than with the broad spectrum of economic growth.

Question 2D. In this regard, do you think the states should have "sovereign" or controlling say over which projects should be federally funded within the state, as provided by section 2(e) of S. 1793?

Answer. Yes. States can determine local needs better than the Federal Government. Establishment of local projects by those most intimately involved also should help to improve the overall national transportation situation. The local governments are closer to the situation and should be better equipped to handle any special circumstances that may arise.

Question 3A. Taking into consideration your strong concern over the summary abandonment procedures of the "Cooperative Assistance Proposal", do you in any case see merit in allowing some sort of subsidy payment for rehabilitation of rail lines losing money?

Answer. Yes. A subsidy payment to permit rehabilitation of a rail line may actually prevent the abandonment. Such subsidy will eliminate the large initial outlay necessary to make up for deferred maintenance, and encourage the railroad to continue operating over the line. If the railroad does not want to continue operations, such rehabilitation subsidy may entice shippers or the state to assume operations. Fixing the line of railroad before it deteriorates into such poor condition that the financial cost of rehabilitation cannot be justified, could greatly reduce the loss of rail service in the country.

Question 3B. In your testimony you praise the switch by many States from Conrail to short line railroads as operators of subsidized branch lines with significantly lower expenses. However, to look ahead to Mr. Mahoney's testimony, he criticizes your Commission for a March 1976, decision not to require "designated operators" to meet the standards of a certificate of public convenience and necessity. Instead, such operators have been granted virtually instant authority to operate lines, without appropriate assurances of continuous service. Would you comment on this criticism?

Answer. Designated operators are provided for by section 304 of the 3–R Act. Since a designated operator status has been created by statute, the Commission must follow the statute. Additionally, designated operators enter into agreements for continued operators for the length of the agreement.

Question 4A. Distinctions between "abandonable within three years", "potentially subject to abandonment", and "abandonment application pending" may make sense legally, but they won't assuage small community fears very well. The rail system diagram maps published have caused national headlines and great concern among shippers and communities. Do you think you could or should have done more to prepare or educate the concerned public about the new abandonment requirements? What are you doing now to educate the public on new procedures to be followed?

Answer. The purpose of the maps is to give advance notice of what the railroads are planning to do. It did come as a shock to many, but I believe in the long run the advantages of the advance notice will override the disadvantages. The Rail Services Planning Office has prepared a simple briefing document which discusses the new procedures and it has been furnished to those indicating an interest. The Office has been working with the states and many communities in explaining the procedures. Later this month we will release a booklet which will

identify all of the lines the railroads have placed in these categories. It will also contain a summary of the new procedures. These booklets will be widely distributed and hopefully will meet the need which you have correctly identified.

Question 4B. The ICC issued an interim set of regulations in March 1976, and a final set on November 1, 1976, dealing with the new abandonment proceedings. Is it true that these two sets of regulations created different standards to be followed by some railroads, including rail properties owned by the bankrupt northeast lines? What have you done to remedy this situation?

Answer. The standards for rail subsidies promulgated in March 1976, were merely stopgap measures until the final regulations were enacted in November 1976. The interim standards were based on the standards used for the northeast lines. The differences between the interim and northeast standards and those in the final regulations is that the final regulations do not contain the cost of administering the properties. The interim standards apply to all applications filed prior to November 1, 1976, while the final regulations apply to applications filed on and after November 1, 1976, regardless of the railroad filing the application.

Senator DURKIN. Mr. John Sullivan.

I want to welcome you, Mr. Sullivan. I understand this is your first appearance before a Senate subcommittee since your confirmation hearing and swearing-in. I want to welcome you back.

My procedure is we are not too formal so your full statement will be included in the record and you can proceed any way you feel will provide the committee with the greatest amount of worthwhile information.

If you could introduce the gentlemen accompanying you for the record.

STATEMENT OF JOHN M. SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION; ACCOMPANIED BY CHARLES SWINBURN; AND ROBERT E. GALLAMORE

Mr. SULLIVAN. I have Bob Gallamore, who is my deputy, and on my left is Charles Swinburn, associate administrator for Federal assistance.

I thought it would be helpful if I submitted the full statement for the record but read the portions of it that apply to the State assistance programs and then answered questions you may have on that.

Senator DURKIN. Fine.

Mr. SULLIVAN. Before I discuss the legislation proposed in S. 1793, I would like to review the status of the local rail service program.

You're dealing with two distinct programs at the present time. The first, in terms of when it was enacted, is the regional program initially authorized by section 402 of the Regional Rail Reorganization Act of 1973.

The 402 program became effective on April 1, 1976, and applies to 18 States in the Northeast and Midwest. These are the States in which certain light density lines are located that were previously owned by the bankrupt railroads but which were not transferred to ConRail or to other operating railroads.

The regional program will terminate, under existing provisions of law, after 2 years, on April 1, 1978. At that time, the States will become eligible to participate in the national program, authorized by section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976. The national program became effective on July 1, 1976, and is

scheduled, under current law, to terminate after 5 years, on July 1, 1981.

All 18 States are participating in the 402 regional program, although one State, West Virginia, has not yet moved beyond the planning stage. Of the potential 7,700 miles of lines currently eligible for assistance under the program, lines with approximately 3,000 miles are being assisted. The lines eligible for assistance under 402 fall into three categories:

(1) Lines formerly used by the railroads in reorganization but which were not designated for continued use in the final system plan or which were allowed to be discontinued because of the approval of a coordination project;

(2) Lines that have been authorized to be abandoned or service discontinued by the Interstate Commerce Commission after January 3, 1974; and

(3) Lines owned, operated, or leased by a State within 5 years of the enactment of the Act or with respect to which a State invests substantial sums for improvement or maintenance of service.

Most of the 3,000 miles of line designated for assistance to date have fallen within the first category; that is, lines not designated for use in the final system plan. This category comprises the bulk of lines which are eligible—approximately 6,000 miles.

To be eligible for 402 assistance, a State must first develop a plan for rail transportation and local rail services. The costs of preparing this plan can be funded by up to 5 percent of a State's 402 grant. Seventeen States have established such a plan. The total amount of funds, to date, allocated for planning is $2.8 million.

In addition to planning, States may use 402 funds for three other key activities: Operating subsidies to maintain rail service and supporting facilities, modernization or acquisition of rail properties, and the construction or improvement of nonrailroad-related facilities to accommodate freight previously moved by rail service.

Of the $180 million authorized for the program, $112 million has been appropriated through fiscal year 1977. Another $54 million has just cleared the Congress for use in fiscal year 1978. As of July 1, 1977, $66 million of that appropriation has been obligated. Funds are allocated to each State in accordance with a single factor formula based on the proportion of mileage eligible for 402 assistance located in that State. For the first year of the program—April 1, 1976, to April 1, 1977—the Federal share of program costs was 100 percent, and the second year, 90 percent.

Under the 5-year national program $360 million has been authorized: $11.75 million has been appropriated through fiscal year 1977 and $3.6 million obligated, all for planning activities. Thirty-two States are eligible for assistance under the 803 program and, as of July 1, 1977, all 31 States which applied for planning grants have had their applications approved.

These States contain approximately 2,100 miles of lines now eligible for assistance. Under the national program, eligible lines are those which the ICC has authorized to be abandoned or lines on which it has approved a discontinuance of service. After the regional program is merged with the 803 program, on April 1, 1978, lines which were

eligible under the regional program would continue to be eligible for assistance under the national program.

The 803 program is otherwise similar to the 402 program, including a phasing down of the Federal share, from 100 percent in the first year, to 70 percent during the final 2 years. More detailed State-by-State information is contained in attachment A to my statement.

S. 1793 makes several changes to both the regional and national rail services programs. Some of these changes would improve the programs. The major thrust of the bill, however, is to significantly expand the types of lines eligible for rehabilitation and maintenance assistance.

Specifically, S. 1793 would add approximately 17,000 miles to the 9,800 miles now eligible for assistance by expanding the coverage of the program to include the following additional categories:

(1) Lines subject to an abandonment proceeding before the Commission;

(2) Lines which a railroad has designated as either potentially subject to abandonment or which the carrier plans to abandon or discontinue; and

(3) Lines respecting which a railroad extends a "cooperative assistance proposal" whereby the railroad proposes not to abandon the line if within 90 days the railroad receives an offer from the State of a rail service continuation payment covering 90 percent of the difference between the revenues which are attributable to the line and the avoidable cost of providing rail freight service on such line together with a reasonable return on the value of such line. If a State does not make such an offer or a rail service continuation payment is not made when due, the bill—section 5—would require the ICC to permit a discontinuance or an abandonment within 30 days of receipt of the railroad's discontinuance or abandonment application.

We do not support such a major revision to the local rail services program at this time, or the proposed modification to the abandonment and discontinuance procedures. With respect to the latter, the procedures proposed by the bill would circumvent the elaborate safeguards of the public interest inherent in section 1(a)—that is, notice, opportunity to express views, and the ICC's determination as to whether the public convenience and necessity dictates continuation of the service.

Furthermore, there is nothing in the bill to prevent a railroad, knowing of the limited financial resources of most States, from submitting several assistance proposals on the same day. The State, being unable to afford to subsidize several lines at one time, would be forced to reject some or all of the proposals, and the railroad would be permitted to abandon or discontinue service which might not otherwise meet the tests of section 1(a).

With respect to the proposed expansion of the local rail services program, it is our position that these programs should retain their initial purpose—which was to provide temporary assistance to ease the disruption to shippers and communities of discontinued rail service—until studies and planning now underway can better define the kind of freight transportation, rail or otherwise, the local area should receive.

At the State level, the studies and planning are in the form of the State rail plans required by the act. For many States this is their first opportunity to survey their rail needs and to establish a comprehensive

plan to meet those needs. The States under the national program are still in the process of designing their rail plans. These plans will address much more than just the lines now eligible for Federal assistance. Major new directions to the Federal program ought to wait on the results of this State planning effort.

We are also at the planning stage, at the Federal level, of determining the proper Federal-State role in preserving essential rail services.

The issue of the scope, extent, and impact of the uneconomic branch line problem is part of the comprehensive study of the American Railway System mandated by section 901 of the 4–R Act. The financial impact of uneconomic branch lines on the railroads will be examined as part of the railroad capital needs study being conducted under section 504 of the 4–R Act. A key element in the analysis involves a look at the likelihood that traffic originating or terminating on branch lines will continue to travel by rail for the line-haul portion of the shipment in the event service is discontinued on the branch line.

The basic purpose of these studies is to determine the importance of this matter to the overall financial health of the railroads, not on a line-by-line basis, but for the system as a whole. Doing this will enable us to examine the adequacy of the local rail services program in the light of a comprehensive picture of the branch line problem, and will shed additional insight as well on the appropriate Federal-State role in defining and preserving essential rail services. Any fundamental changes in the program prior to the completion of these studies would be, in my opinion, premature.

Pending completion of these studies and plans, the 4–R Act title V railroad financial assistance programs, combined with the protection afforded by the local rail service program, should provide the right mix of incentives. Railroads are encouraged to revitalize the economically viable parts of their systems and States have the means to preserve local service on those portions of the unprofitable lines which are abandoned, until long-term solutions to the freight problem can be designed.

Now let me turn to those portions of the bill which are aimed at expanding State flexibility, and which we generally favor.

Section 2(a)(1) and (2) of the bill conforms the matching ratio period to coincide with the Federal fiscal year by extending the 90 percent Federal funding period an additional 3 months to September 30, 1978. We agree that this revision would promote smoother administration of the program.

Section 2(a)(3) permits a State to use excess in-kind benefits earned in one program year to match the State's share in a subsequent year's program. This provision is desirable in that it recognizes the multi-year aspects of a State's program.

We agree with the intent of the provisions of section 2(a)(3) which change the way the State matching share is determined. The amount of the State share increases from one program year to another. Projects begun in one program year may extend into the next program year. The way the statute is now written, the matching share is determined as of the date work is actually performed. We agree that this result is undesirable, but prefer a solution other than that contained in S. 1793. S. 1793 fixed the time for determining the match-

ing share as the initiation of any project. Since some projects would be funded with more than a single year's entitlement, we feel it would be unfair to continue a lower matching share throughout the life of a project. Instead, we recommend that the matching share for any annual entitlement be the one in effect at the time the funds are obligated to the State.

We have difficulty with the last two sentences of section 2(a)(3) and section 2(e). The apparent intent is to authorize multiyear projects and to permit States to initiate projects in advance of the Federal appropriation and approval process. We are opposed to these provisions. Based on our reading, States could initiate projects with their own resources and would subsequently receive Federal reimbursement. This would make it extremely difficult to control the program's funding level since State-initiated projects would tend to set a floor for Federal reimbursement.

Similarly, if the project were already undertaken by the State, we could not review applications to determine whether a proposed improvement is cost effective. In addition, reimbursement for past activities has long been disfavored in Federal programs generally because it would be impossible to insure compliance with a number of Federal policies which are prerequisites to all Federal grants-in-aid. These policies include competitive procurement, civil rights and affirmative action measures, and recordkeeping for audit purposes. All of these are reviewed when the final audit of any federally assisted project is made. If they are not followed, costs may be disallowed. Consequently, the State should agree to comply with these Federal policies at the beginning of the activity to protect against disallowance of costs.

Turning to rail planning, section 2(g) would establish a $10 million ceiling on planning grants for each fiscal year through September 30, 1980. Under existing law, $5 million a year is available for planning, through September 30, 1978. Planning is a highly essential component of the State involvement in rail transportation. However, we see no need for a specific authorization with a dollar ceiling. Rather, the law could specify that a percentage of each State's entitlement would be available for planning, the percentage to be set either by law or by the Secretary.

The 402 regional program now contains such language, setting a 5 percent ceiling on planning. We favor this approach. In addition, we see no need to increase the limit on planning funds for the first 2 fiscal years of the program since they have already passed. There is no apparent need to reimburse States for work done during those years in excess of the amounts granted to them under their entitlements.

There are two provisions of the existing statutes which we believe should be changed. These are the companion reallocation provisions of section 402 of the 3–R Act and 803 of the 4–R Act.

The reallocation provisions do not provide the flexibility that the States need to commit funds during the fiscal year. Under existing law, we are required under both programs to reallocate funds not used or committed by a State "immediately to the extent practicable" after the original allocation to the State.

Senator DURKIN. Could I interrupt you a second? Your entire statement will be submitted in the record. Maybe you could summarize

it and we could get to the questions. We have a vote at 11 a.m. and we have a long witness list.

Mr. SULLIVAN. Yes, sir. In practice this requirement of expedited reallocation worked well. We recommend that funds be reallocated only if the State cannot use those funds by the end of the fiscal year. Proposed language to achieve this is attached to my statement as attachment B.

Further views on those portions of the bill dealing with the State rail assistance programs can be found in a section-by-section analysis of the bill—attachment C.

Senator DURKIN. The entire statement will be printed in the record.

It would appear that there is clear congressional intent that some of the rehabilitation and maintenance be performed under the 100 percent subsidy.

I gather from your testimony that you favor denying some of the States, the Northeast and other States significant funds at the 100 percent level?

Mr. SULLIVAN. Yes, sir, based on our experience to date there has been no instance of anybody not getting planning funds for lack of a matching share.

We have 2 years behind us on that in the Northeast.

Senator DURKIN. Let me have that again.

Mr. SULLIVAN. We have had no instance yet of anybody not going ahead with the program for lack of the matching share.

Senator DURKIN. Under title VIII, the national program, appropriated through fiscal 1977 was almost $12 million and $3.6 million was awarded for planning. Zero was awarded for real projects.

Mr. SULLIVAN. I will ask Mr. Swinburn who is in charge of that program to respond to that.

Mr. SWINBURN. That is correct, Senator.

According to the law no money can be obligated for projects until a State has an approved rail plan. So that heretofore the money in the national program is being spent on the planning phase and until States have plans submitted and approved, no money can be spent on the project phases of the program.

Senator DURKIN. In title IV of the 3–R Act with respect to Northeast, $112 million was appropriated and only $66 million was awarded for rail projects.

Is your answer the same there for that discrepancy, too?

Mr. SWINBURN. No, sir. In the Northeast program, your figures are correct. There is additionally $42 million presently in the pipeline in projects. There is a chart attached to the testimony which breaks that out by State.

We expect those all to be approved within the next 3 to 4 weeks which will give us $108 million of the $112 and we anticipate that the remaining $4 million will reach us in applications prior to the end of the fiscal year and the entire $112 will be obligated by the end of the fiscal year.

Senator DURKIN. Will the money in the pipeline go to the States at the 100-percent level?

Mr. SWINBURN. No, sir, it will not. It will be at the 90–10 level. In the Northeast, we have been 90–10 since April 1 of this year.

Senator DURKIN. Why not at 100-percent level?

Mr. SWINBURN. By law now, we are in the 90–10 period so that any money obligated and spent is 90–10 money.

Sentor DURKIN. That is as high a percentage as you can award under the law?

Mr. SWINBURN. That is correct.

Sentor DURKIN. With respect to the Northeast, shouldn't 50 percent of those funds go out at the 100-percent level?

Mr. SWINBURN. I don't have a breakdown for all of the funds as to how much went out at 100 percent and how much at 90–10.

To a certain extent, we have to wait for the complete audits to be done to know what the proportions were. I guess it was about half of the total $112 that went out at the 50-percent level or somewhere around $50 million.

Most of that money would have been for operating subsidies in the first year of the program.

Senator DURKIN. You mean half at 100 percent?

Mr. SWINBURN. Yes; that is right.

That would have been for operating subsidies in the first year of the program.

Senator DURKIN. Well, did all of the money that could go out at 100 percent, has that gone out?

Mr. SWINBURN. Yes, sir.

Senator DURKIN. What were some of the delays involved in approving the State rail plan?

Mr. SWINBURN. I guess that is directed to the national program if we are in the State rail plan phase.

Let me run through the timetable, if I may. The bill was passed in February 1976, as you know.

In August 1976, the FRA published preliminary regulations for the national program to tell the States how they should put together their State rail plans.

Simultaneously and through the fall, a series of seminars were run by the FRA across the country to educate the States as to how to put together a program. The States were told to use their preliminary regulations in putting together their plans.

The first plan reached us in September 1976. We got another several in November and December 1976. The bulk of the plans—and this is the bulk of 32 States eligible—reached us in January, February, and March 1977.

We approved all plans. I shouldn't say all, but with certain exceptions where States requested extensions, the bulk of the plans, we approved by May 1 of 1977. That is the calendar.

I think in some cases we probably did not process administratively some plans as rapidly as we could. I think the fact we got essentially 30 plans in a 2-month period and processed them in a 4-month period, and these are requests for the planning fund——

Senator DURKIN. Why did it take a year or more in some cases to get planning funds to the States?

Mr. SWINBURN. It is a case of the regulations being out in August, and it is a case then of when the States got their applications together, got them to us and they were processed.

Senator DURKIN. This may be unfair and subject to later revision, but to the extent that I have been involved, I have the impression that the FRA is a lag rather than an expediter with respect to this.

It may be unfair and subject to later revision. I know Mr. Sullivan has just come aboard, so it cannot be ascribed to him. But I get the feeling that the FRA is a minor version of OMB.

Mr. SWINBURN. That is not a new charge, Senator. I have heard it before.

Senator DURKIN. Then what action did you take after you heard it the first time?

Mr. SWINBURN. I am sure from the States' point of view that the amount of time it has taken for those planning funds to flow is a troublesome and bothersome thing, but I have to quote from the act and point to the fact that the act, congressionally approved language, is that a State has to establish an adequate plan for rail service before any project funds can flow.

And, we believe that the procedures and the requirements that we have established lead to the development of an adequate plan and I am not sure that without sacrificing the intent of that language, the process could have moved much faster.

I have looked closely at the protest. I came onboard after most of it had gone forward. I am convinced that the people who actually run that program and the people who have been processing those applications have been doing the best they can to stay within that congressional intent so that the planning process will produce an adequate plan.

Senator DURKIN. How long have you been aboard?

Mr. SWINBURN. I guess about 7 or 8 months, Senator.

Senator DURKIN. You seem to be familiar with the criticisms. Would you say they are valid then?

Mr. SWINBURN. No, sir, I would not.

Mr. SULLIVAN. If I might respond as a newcomer on the scene, there seems to be a widespread perception that FRA has been dragging its feet in these matters and in the extremely thorough briefings I have received I haven't detected that at all.

I have in FRA high quality staff. They have intricate complex regulations to draw up. They were stymied by revisions in the original act and that was not always made known to the general public.

Even more recently, with the secretary's staff, we sat down and had our staff go over line by line all of those regulations to be sure we could keep them as simple as possible, to get these moneys moving within the requirements of the law.

I might add in the northeast bankruptcy situation there was a subsequent GAO report which was highly critical of the methods, perhaps a little too loose in some areas, of putting those moneys out.

I think FRA has to be sensitive to that sort of thing or we won't be doing our job. I think the staff has done an excellent job in these areas.

Senator DURKIN. We are not pointing a finger at anyone. I think running through the whole rail problem, with the view of the prior administration, they didn't seem to want to spend money on rails at all. I think there was a definite direction from the White House to the Secretary of Transportation and others to go slow and to—when in

doubt to postpone, delay and thereby make sure the money wasn't spent.

You can't turn things like that around in 4 or 5 months no matter how good a staff you have and no matter how hard you work. Not even by implication do I want to criticize your efforts.

Mr. SULLIVAN. Our stance is to move aggressively and implement these provisions and get the moneys out.

Senator DURKIN. One problem is an institutional problem. What is considered precipitous action in Washington can be considered a slow response out in the States.

The States look at the program as a major revitalization effort. Do you think they are wrong in pursuing this?

Mr. SULLIVAN. If we are referring to the national program, we have a difference of perception. We see the State assistance as a bridge to cushion the effect of abandonments and discontinuance of service and not a rehabilitation program.

Senator DURKIN. Bridge between rails and bike paths?

Mr. SULLIVAN. Bridge between rail service and modified rail service, and no rail service at all if that is the States' decision.

Senator DURKIN. During the period that moral warfare is going on don't you think this is a national concern? It shouldn't just be left to the States.

Mr. SULLIVAN. Very much so.

Senator DURKIN. Again, we talk about coal. I have heard Schlesinger time and time again, a billion tons of coal. No one has said how they are going to get it there, get it to the new industries, get it to the industries that are going to have to convert.

Mr. SULLIVAN. The studies that we referred to, Senator, the 901 and 504 studies, a key part of those studies is an analysis of needs such as that.

I might add that Secretary Adams has had Chester Davenport, assistant secretary for policy, chairing a coal task group.

Senator DURKIN. What happens? We have task forces and they have little task forces running around this town.

What happens when the task forces report you need those lines and you let the States abandon them and there are weeds growing in them now, rights-of-way are torn up or someone else has title to the rights-of-way. What do you do with your studies then?

Mr. SULLIVAN. Right now the law enables the States to address themselves to such problems. If the State of Pennsylvania has the anthracite coal it has up there and wants to keep lines up they can make that part of their State rail plan and do so.

We in the economic stimulus package had $2 million appropriated for the fossil fuel rail bank program. We will, within 5 months have regulations promulgated which will enable us to utilize those funds for these purposes.

I would say the act is well drawn. There are ongoing programs to address these problems and I share your concern.

Senator DURKIN. I gather from that that you lean toward a moratorium for 18 months or so on abandonments?

Mr. SULLIVAN. We expect the 504 and 901 studies to be available in January and out of that we would be addressing ourselves to these problems.

Senator DURKIN. You would only go with a moratorium for 1 year instead of 18 months on abandonments?

Mr. SULLIVAN. The process is in place. I don't see that we need a moratorium on abandonments.

Senator DURKIN. Maybe not from the viewpoint of Washington, but again from the viewpoint of the States, I for one hate to see—I don't want to see one line abandoned unless the clear preponderance of the evidence indicates that it is a gross misuse of resources to maintain that line.

Mr. SULLIVAN. Yes, sir, I think our view is that the overriding obligation is to look to the health and economic viability of the national rail system as a whole.

Chairman O'Neal mentioned we are talking essentially about the *circulatory* system of the country and we are.

In spite of the trouble on the railroads, 30 percent of all freight still moves by rail. I think as I recall the return on investment in the industry averaged 1.49 percent last year. It is *on-balance* a very troubled industry with the exception of a few prosperous carriers. But it is an industry that urgently needs improvement.

We consider that an overriding goal. What happens to branch lines is part and parcel of studies to see what is good for the industry as a whole.

Senator DURKIN. Mr. Sullivan, I have other questions here but the hour is such that if we explore these questions we are not going to get to the other witnesses. So we will submit these questions in writing and give you and your staff adequate time to provide answers.

Mr. SULLIVAN. Thank you, Senator.

Senator DURKIN. If you don't have anything else I think maybe we should go to the next witnesses. I want to thank you. I know you have busy schedules.

[The statement follows:]

STATEMENT OF JOHN M. SULLIVAN, ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

It is a pleasure to appear here today to testify on the progress of the local rail services program and to provide the Administration's position on S. 1793, the proposed "Railroad Improvement Act of 1977".

LOCAL RAIL SERVICES PROGRAM

Before I discuss the specific legislative changes which are proposed in S. 1793, I would like to review briefly the status of the local rail services program.

We are really dealing with two distinct programs, at the present time. The first, in terms of when it was enacted, is the regional program initially authorized by section 402 of the Regional Rail Reorganization Act of 1973.

The 402 program became effective on April 1, 1976, and applies to 18 States in the Northeast and Midwest. These are the States in which certain light density lines are located that were previously owned by the bankrupt railroads but which were not transferred to Conrail or to other operating railroads.

The regional program will terminate, under existing provisions of law, after two years, on April 1, 1978. At that time, the States will become eligible to participate in the national program, authorized by section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976. The national program became effective on July 1, 1976, and is scheduled, under current law, to terminate after five years, on July 1, 1981.

All 18 States are participating in the 402 regional program, although one State, West Virginia, has not yet moved beyond the planning stage. Of the poten-

tial 7,700 miles of lines currently eligible for assistance under the program, lines with approximately 3,000 miles are being assisted. The lines eligible for assistance under 402 fall into three categories.

(1) lines formerly used by the railroads in reorganization but which were not designated for continued use in the Final System Plan or which were allowed to be discontinued because of the approval of a coordination project;

(2) lines that have been authorized to be abandoned or service discontinued by the Interstate Commerce Commission after January 3, 1974; and

(3) lines owned, operated or leased by a State within five years of the enactment of the Act or with respect to which a State invests substantial sums for improvement or maintenance of service.

Most of the 3,000 miles of line designated for assistance to date have fallen within the first category; that is, lines not designated for use in the Final System Plan. This category comprises the bulk of lines which are eligible—approximately 6,000 miles.

To be eligible for 402 assistance, a State must first develop a plan for rail transportation and local rail services. The costs of preparing this plan can be funded by up to five percent of a State's 402 grant. Seventeen States have established such a plan. The total amount of funds, to date, allocated for planning is $2.8 million.

In addition to planning, States may use 402 funds for three other key activities: operating subsidies to maintain rail service and supporting facilities, modernization or acquisition of rail properties, and the construction or improvement of nonrailroad-related facilities to accommodate freight previously moved by rail service.

Of the $180 million authorized for the program, $112 million has been appropriated through fiscal year 1977. Another $54 million has just cleared the Congress for use in fiscal year 1978. As of July 1, 1977, $66 million of that appropriation has been obligated. Funds are allocated to each State in accordance with a single factor formula based on the proportion of mileage eligible for 402 assistance located in that State. For the first year of the program (April 1, 1976, to April 1, 1977), the Federal share of program costs was 100 percent, and in the second year, 90 percent.

Under the five-year national program, $360 million has been authorized. $11.75 million has been appropriated through fiscal year 1977 and $3.6 million obligated, all for planning activities. Thirty-two States are eligible for assistance under the 803 program and, as of July 1, 1977, all 31 States which applied for planning grants have had their applications approved.

These States contain approximately 2,100 miles of lines now eligible for assistance. Under the national program, eligible lines are those which the ICC has authorized to be abandoned or lines on which it has approved a discontinuance of service. After the regional program is merged with the 803 program, on April 1, 1978, lines which were eligible under the regional program would continue to be eligible for assistance under the national program.

The 803 program is otherwise similar to the 402 program, including a phasing down of the Federal share, from 100 percent in the first year, to 70 percent during the final two years. More detailed State-by-State information is contained in Attachment A to my statement.

S. 1793 makes several changes to both the regional and national rail services programs. Some of these changes would improve the programs. The major thrust of the bill, however, is to significantly expand the types of lines eligible for rehabilitation and maintenance assistance.

Specifically, S. 1793 would add approximately 17,000 miles to the 9,800 miles now eligible for assistance by expanding the coverage of the program to include the following additional categories:

(1) lines subject to an abandonment proceeding before the Commission;

(2) lines which a railroad has designated as either potentially subject to abandonment or which the carrier plans to abandon or discontinue; and

(3) lines respecting which a railroad extends a "cooperative assistance proposal" whereby the railroad proposes not to abandon the line if within 90 days the railroad receives an offer from the State of a rail service continuation payment covering 90 percent of the difference between the revenues which are attributable to the line and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value

of such line. If a State does not make such an offer or a rail service continuation payment is not made when due, the bill (section 5) would require the ICC to permit a discontinuance or an abandonment within 30 days of receipt of the railroad's discontinuance or abandonment application.

We do not support such a major revision to the local rail services program at this time, or the proposed modification to the abandonment and discontinuance procedures. With respect to the latter, the procedures proposed by the bill would circumvent the elaborate safeguards of the public interest inherent in section 1a (i.e., notice, opportunity to express views, and the ICC's determination as to whether the public convenience and necessity dictates continuation of the service). Furthermore, there is nothing in the bill to prevent a railroad, knowing of the limited financial resources of most States, from submitting several assistance proposals on the same day. The State, being unable to afford to subsidize several lines at one time, would be forced to reject some or all of the proposals, and the railroad would be permitted to abandon or discontinue services which might not otherwise meet the tests of section 1a.

With respect to the proposed expansion of the local rail services program, it is our position that these programs should retain their initial purpose—which was to provide temporary assistance to ease the disruption to shippers and communities of discontinued rail service—until studies and planning now underway can better define the kind of freight transportation, rail or otherwise, the local area should receive.

At the State level, the studies and planning are in the form of the State rail plans required by the Act. For many States this is their first opportunity to survey their rail needs and to establish a comprehensive plan to meet those needs. The States under the national program are still in the process of designing their rail plans. These plans will address much more than just the lines now eligible for Federal assistance. Major new directions to the Federal program ought to wait on the results of this State planning effort.

We are also at the planning stage, at the Federal level, of determining the proper Federal-State role in preserving essential rail services.

The issue of the scope, extent, and impact of the uneconomic branch line problem is part of the Comprehensive Study of the American Railway System mandated by section 901 of the 4R Act. The financial impact of uneconomic branch lines on the railroads will be examined as part of the Railroad Capital Needs Study being conducted under section 504 of the 4R Act. A key element in the analysis involves a look at the likelihood that traffic originating or terminating on branch lines will continue to travel by rail for the line-haul portion of the shipment in the event service is discontinued on the branch line.

The basic purpose of these studies is to determine the importance of this matter to the overall financial health of the railroads, not on a line-by-line basis, but for the system as a whole. Doing this will enable us to examine the adequacy of the local rail services program in the light of a comprehensive picture of the branch line problem, and will shed additional insight as well on the appropriate Federal-State role in defining and preserving essential rail services. Any fundamental changes in the program prior to the completion of these studies would be, in my opinion, premature.

Pending completion of these studies and plans, the 4R Act Title V railroad financial assistance programs, combined with the protection afforded by the local rail services program should provide the right mix of incentives. Railroads are encouraged to revitalize the economically viable parts of their systems and States have the means to preserve local services on those portions of the unprofitable lines which are abandoned, until long-term solutions to the freight problem can be designed.

Now let me turn to those portions of the bill which are aimed at expanding State flexibility, and which we generally favor.

Section 2 (a) (1) and (2) of the bill conforms the matching ratio period to coincide with the Federal fiscal year by extending the 90 percent Federal funding period an additional three months to September 30, 1978. We agree that this revision would promote smoother administration of the program.

Section 2(a)(3) permits a State to use excess in-kind benefits earned in one program year to match the State's share in a subsequent year's program. This provision is desirable in that it recognizes the multi-year aspects of a State's program.

We agree with the intent of the provisions of section 2(a)(3) which change the way the State matching share is determined. The amount of the State share

increases from one program year to another. Projects begun in one program year may extend into the next program year. The way the statute is now written, the matching share is determined as of the date work is actually performed. We agree that this result is undesirable, but prefer a solution other than that contained in S. 1793. S. 1793 fixes the time for determining the matching share as the initiation of any project. Since some projects would be funded with more than a single year's entitlement, we feel it would be unfair to continue a lower matching share throughout the life of a project. Instead, we recommend that the matching share for any annual entitlement be the one in effect at the time the funds are obligated to the State.

We have difficulty with the last two sentences of section 2(a)(3) and section 2(e). The apparent intent is to authorize multi-year projects and to permit States to initiate projects in advance of the Federal appropriation and approval process. We are opposed to these provisions. Based on our reading, States could initiate projects with their own resources and would subsequently receive Federal reimbursement. This would make it extremely difficult to control the program's funding level since State-initiated projects would tend to set a floor for Federal reimbursement.

Similarly, if the project were already undertaken by the State, we could not review applications to determine whether a proposed improvement is cost effective. In addition, reimbursement for past activities has long been disfavored in Federal programs generally because it would be impossible to ensure compliance with a number of Federal policies which are prerequisites to all Federal grants-in-aid. These policies include competitve procurement, civil rights and affirmative action measures, and record-keeping for audit purposes. All of these are reviewed when the final audit of any Federally-assisted project is made. If they are not followed, costs may be disallowed. Consequently, the State should agree to comply with these Federal policies at the beginning of the activity to protect against disallowance of costs.

Turning to rail planning, section 2(g) would establish a $10 million ceiling on planning grants for each fiscal year through September 30, 1980. Under existing law, $5 million a year is available for planning, through September 30, 1978. Planning is a highly essential component of the State involvement in rail transportation. However, we see no need for a specific authorization with a dollar ceiling. Rather, the law could specify that a percentage of each State's entitlement would be available for planning, the percentage to be set either by law or by the Secretary. The 402 regional program now contains such language, setting a five percent ceiling on planning. We favor this approach. In addition, we see no need to increase the limit on planning funds for the first two fiscal years of the program since they have already passed. There is no apparent need to reimburse States for work done during those years in excess of the amounts granted to them under their entitlements.

There are two provisions of the existing statutes which we believe should be changed. These are the companion reallocation provisions of sections 402 of the 3R Act and 803 of the 4R Act.

The reallocation provisions do not provide the flexibility that the States need to commit funds during the fiscal year. Under existing law, we are required under both programs to reallocate funds not used or committed by a State "immediately to the extent practicable" after the original allocation to the State.

In practice this requirement of expedited reallocation has not worked well. We recommend that funds be reallocated only if the State cannot use those funds by the end of the fiscal year. Proposed language to achieve this is attached to my statement as Attachment B.

Further views on those portions of the bill dealing with the state rail assistance programs can be found in a section-by-section analysis of the bill (Attachment C).

COMPENSATION PAID BY AMTRAK FOR SERVICES AND USE OF FACILITIES

Section 3(b) of the bill would amend the Rail Passenger Service Act to clarify the basis on which the ICC would determine compensation to be paid by Amtrak to a carrier for the use of tracks and facilities and for the provision of services ordered by the ICC.

Our greatest concern is that the basic payments by Amtrak to a carrier for use of tracks and facilities and for provision of services, exclusive of any incentive compensation, make the railroad whole with respect to the operation of inter-

city rail passenger service. A carrier railroad should neither incur a greater loss nor receive a greater profit as a result of providing intercity rail passenger service over its lines. We think this would achieve one of the major purposes of the Rail Passenger Service Act; namely, to relieve the railroads of the financial drain caused by the provision of intercity passenger service in exchange for the continued provision of that service at lowest cost to Amtrak.

We think that compensation to carrier railroads for the provision of services ordered by the ICC should include basic payments for the provision of a minimal level of service and incentive payments for improving that service. The appropriate basis for determining basic compensation to a railroad for the provision of services is complete reimbursement of long-term avoidable costs.

We think that long-term avoidable costs are the appropriate compensation for basic services. Whenever a railroad receives more than the avoidable costs of providing the service, the railroad is making more money because Amtrak is using the railroad's services. Incremental costs, which the statute now provides as the basic payment and which section 3(b) of the bill would continue to use, do not necessarily place the railroad in the position it would have been absent intercity passenger service. In an incremental cost system, any category of cost which varies with usage is completely allocated among users even though the allocation to an insignificant user is frequently greater than the added cost caused by that user. An avoidable cost system charges the insignificant user only the additional costs actually attributable to his use.

We concur in the intent of this bill to tie profits made by the railroad to the quality of service provided by the operating railroad. Any payments in excess of avoidable costs for provision of services should be tied directly to the amount by which the quality of service exceeds some minimal performance level. Currently, the ICC uses eighty percent on-time performance as a minimum performance standard. Although many railroads now provide service in excess of that minimum, eighty percent on-time performance is an acceptable base if the railroad is required to operate on an acceptable schedule and if incentive payments are structured to induce the railroad to improve the quality of service provided.

Railroads should be compensated somewhat differently for the use of their tracks and facilities by Amtrak. For tracks and facilities which the railroad uses for other purposes in addition to intercity rail passenger service, we propose that compensation for use of the tracks and facilities by Amtrak be limited to the long-term avoidable costs of making those facilities available to Amtrak. Under those circumstances, avoidable costs suffice to make the railroad whole. For tracks and facilities which would no longer be needed if intercity passenger service were discontinued, the railroad should receive both the avoidable costs of Amtrak's use of the tracks and facilities and a reasonable return on its investment in those tracks and facilities. We also propose that the railroad not receive any additional compensation for use of tracks and facilities as part of any incentive compensation.

The bill is not adequate to solve the problems raised by the *Texas & Pacific* case. We will be happy to work with the Committee both to solve the problems raised by the *Texas & Pacific* case and to meet the related concerns that I have mentioned.

REPRESENTATION ON USRA BOARD

Subsections 4 (a) through (e) of the bill would amend the 3R Act to eliminate the requirement that the Department of Transportation, the Department of the Treasury, and the Interstate Commerce Commission be represented on the USRA Board and the various committees of the Board by either the Secretaries of the respective departments and the chairman of the Commission or by the Deputy Secretaries of the Departments and the Vice Chairman of the Commission. The bill would allow the Departments and the Commission to be represented by the Secretaries and the Chairman or by their authorized representatives. This amendment is needed to ensure that the Departments and the Commission are represented at all USRA Board meetings. The demanding schedules of the heads of these agencies preclude them from attending all USRA Board and committee meetings. The bill would remedy this problem.

LIFE AND MEDICAL INSURANCE BENEFITS

Section 4(f) of the bill is designed to ensure that life and medical insurance benefits of the former employees of the bankrupt railroads are preserved. We

support this goal but feel that the bill should be amended in two respects. First, its scope should be narrowed to cover only pre-conveyance retirees. Second, Conrail should be allowed sufficient flexibility to obtain substitute coverage for those retirees whose insurance coverage has terminated due to the failure of the bankrupt railroads to make premium payments. A more detailed discussion of these and other points concerning section 4(f) is contained in Attachment D to this statement.

UNIFORM ACCOUNTING SYSTEM

Section 5(b) of the bill calls for the establishment by the ICC of a revised uniform accounting and reporting system for railroads. We agree that the uniform system of accounts is badly in need of revision. However, the Congress, in section 307 of the 4R Act, has already provided adequate direction to the ICC to carry out the necessary revisions. Section 5(b) of the bill would inappropriately eliminate some of the positive requirements of section 307; requirements which the ICC has not yet fully implemented.

Section 307 of the 4R Act requires the ICC to promulgate a uniform cost and revenue accounting and reporting system for railroads which would become effective by January 1, 1978. In accordance with section 307, the ICC has published final regulations and procedures prescribing a uniform accounting and reporting system. Unfortunately, the uniform system, as adopted, requires accounts to be kept by function or activity (e.g., maintenance-of-way, maintenance of equipment, etc.). The Commission recognized that it would ultimately have to modify the system to require that the expenses be kept by specific cost centers (e.g., crew districts, yards, shops, etc.). However, the Commission has delayed implementation of the cost center requirements until an additional proceeding on that sole issue can be started and completed.

S. 1793 would make major substantive amendments to section 307 of the 4R Act. The effect of the amendments would be to mandate an accounting and reporting system very like the one newly adopted by the ICC. For reasons described in DOT's petition for reconsideration of Commission's Report and Order, a copy of which is attached as Attachment E, we oppose the type of accounting and reporting system recently promulgated by the Commission and sanctioned by the bill.

PROVISIONS RELATING TO THE NORTHEAST CORRIDOR IMPROVEMENT PROJECT

Section 6(a) of the bill would require that the high-speed intercity rail passenger service, to be established as a result of the Northeast Corridor Improvement Project, meet or exceed the statutory trip time goals rather than merely meet them. This amendment, in our opinion, is undesirable. The amendment unduly stresses the time factor in providing quality passenger service. We are committed to meeting the trip time goals for premium service, although there will be other levels of service provided.

We are opposed, however, to sections 6(b) and (d) of the bill. These provisions would eliminate the requirement that State, local or regional transportation authorities provide fifty percent of the funds for making non-operational improvements to stations in the Northeast Corridor improvement project. The Federal Government would be required to carry the full load at an additional cost of $150,000,000.

The State and local governments should bear their fair share of these improvements. Non-operational improvements to stations are primarily local in benefit, unlike any of the other Northeast Corridor improvements. Many such improvements would be of more benefit to local commuter transportation than to intercity passenger traffic. Other such improvements would primarily benefit local traffic patterns. Still others would mainly assist local businesses in the stations.

Furthermore, many of the Corridor stations are notable landmarks in their communities. The community gains considerably from the improvement of these buildings and should be willing to bear half of the cost of non-operational improvements.

Section 6(c) of the bill would involve the Secretary of Transportation in the development and purchase of Amtrak equipment for use in the Northeast Corridor. We believe this provision is unnecessary as the Secretary now has adequate authority to participate in the devolpment and purchase of such equipment, both through an advisory capacity and through his role in the Amtrak budget.

Section 6(f) of the bill would authorize appropriations of up to $75 million for fiscal year 1979 under the Department of Interior program for the conversion of abandoned rail rights-of-way to recreation usage. Since this authority would be administered by the Secretary of the Interior, we would expect him to communicate the Administration's views on this provision to the Committee. However, we have been informed that the 1978 appropriations for the Interior Department included $5 million for this program. We further note that the President's February budget did not recommend any appropriation for this program in fiscal year 1978.

This concludes my prepared statement, Mr. Chairman, and I would be pleased to answer any questions.

ATTACHMENT A

MILEAGE ELIGIBLE UNDER TITLE IV, REGIONAL RAIL REORGANIZATION ACT OF 1973, AS AMENDED

State	Total eligible miles in the State [1]	State's percentage of eligible miles in region	State's percentage of title IV funds	Obligations as of Sept. 30, 1976	Funds available from fiscal year 1976 appropriation	Funds available from fiscal year 1977 appropriation	Total funds available in fiscal year 1977
Connecticut	86.8	1.13	3	$1,073,008	$115,536	$1,897,500	$2,013,036
Delaware	55.3	.72	3	1,226,675	115,536	1,897,500	2,013,500
Illinois	370.9	4.81	3.82	1,811,894	147,251	2,418,349	2,652,028
Indiana	776.2	10.06	8	4,031,794	308,158	5,060,992	5,550,024
Maine	48.6	.63	3	812,278	115,536	1,897,500	498,504
Maryland	307.4	3.99	3.17	1,551,384	122,041	2,004,315	2,197,988
Massachusetts	125.1	1.62	3	1,462,500	115,536	1,897,500	2,013,036
Michigan	1,242.9	16.11	12.81	6,546,160	493,440	8,103,978	8,887,045
New Hampshire	133.8	1.73	3	1,462,500	115,536	1,897,500	2,013,036
New Jersey	175.1	2.27	3	1,462,500	115,536	1,897,500	2,013,036
New York	1,487.1	19.28	15.33	7,641,255	590,386	9,696,215	10,633,137
Ohio	1,007.9	13.07	10.39	4,354,630	400,144	6,571,727	7,206,740
Pennsylvania	1,307.0	16.95	13.48	5,783,165	518,889	8,521,924	9,345,378
Rhode Island	11.0	.14	3	1,191,053	115,536	1,897,500	2,013,036
Vermont	280.3	3.63	3	1,489,874	115,536	1,897,500	2,013,036
Virginia	181.3	2.35	3	1,462,500	115,536	1,897,500	2,013,036
West Virginia	40.7	.53	3	73,125	115,536	1,897,500	2,013,036
Wisconsin	75.6	.98	3	1,462,500	115,536	1,897,500	2,013,036
Total	7,713.0	100.00	100.00	44,898,795	3,851,205	63,250,000	67,101,205

[1] Determined in conjunction with Rail Services Planning Office.

TITLE IV.—RAIL SERVICE CONTINUATION ASSISTANCE, ESTIMATED NEW OBLIGATIONS CURRENTLY IN PIPELINE, JULY 1, 1977

	Accelerated maintenance/ subsidy	Alternate facility	Acquisition	Rehabilitation	Lease and taxes	Planning and program	Total
Connecticut	$258,170		$750,436		$127,107	$97,797	$1,233,520
Delaware	289,264				86,083	146,469	521,815
Illinois	2,734,977				420,672	202,782	3,358,431
Indiana	4,004,358				732,060	190,022	4,926,440
Maine	435,177					63,227	498,404
Maryland	1,177,364		13,674		410,217		1,601,255
Massachusetts							
Michigan	4,913,398				1,010,500		5,923,898
New Hampshire	1,514,127						1,514,127
New Jersey			1,300,000				1,300,000
New York	2,527,871	$108,833	51,000	$1,814,000	974,678	272,603	5,748,995
Ohio			7,256,872				7,256,872
Pennsylvania	2,558,921				642,006	599,249	3,800,176
Rhode Island			1,000,000				1,000,000
Vermont							
Virginia							
West Virginia			1,788,333			23,400	1,811,733
Wisconsin	1,568,474					112,578	1,681,052
Total	23,360,944	108,833	12,160,315	1,814,000	4,403,322	1,698,127	42,176,718

MILEAGE ELIGIBLE UNDER SEC. 803 RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

State	Mileage eligible (Feb. 1, 1977)	Fiscal years 1976, 1977 total funds (Sept. 30, 1976)	Total funds reallocated to the State (May 30, 1977)	Funds committed (July 1, 1977)	Fiscal years 1976, 1977 funds total available to the State (July 1, 1977)
Alabama	50.16	$450,600	$97,618	$833,490	$481,108
Alaska	0	117,500	0	0	0
Arizona	0	117,500	0	100,000	100,000
Arkansas	32.17	288,780	62,965	244,552	307,517
California	79.43	272,910	155,565	232,262	387,827
Colorado	31.02	117,500	61,107	100,000	161,107
Florida	68.54	856,469	119,539	370,835	490,374
Georgia	97.50	117,500	190,383	65,212	255,595
Idaho	18.87	117,500	36,676	44,000	80,676
Iowa	437.48	2,017,960	652,833	1,189,320	1,842,153
Kansas	30.93	289,029	60,545	245,991	306,536
Kentucky	28.0	199,933	54,995	170,156	225,151
Louisiana	73.98	494,837	143,713	421,137	564,850
Minnesota	218.70	916,570	391,649	556,000	947,649
Mississippi	63.70	309,023	122,133	182,400	304,533
Missouri	72.58	117,500	142,965	100,000	242,965
Montana	27.11	117,500	53,405	100,000	153,405
Nebraska	133.70	883,459	203,486	372,550	603,036
Nevada	0	117,500	0	100,000	100,000
New Mexico	14.42	180,189	28,337	152,219	180,556
North Carolina	44.65	149,951	87,852	127,614	215,466
North Dakota	10.08	125,958	19,851	107,198	127,049
Oklahoma	30.00	374,877	56,817	196,800	253,617
Oregon	17.58	219,678	34,507	186,960	221,467
South Carolina	22.61	117,500	44,541	100,000	144,541
South Dakota	147.76	117,500	291,004	100,000	391,004
Tennessee	111.79	162,571	218,825	129,528	339,253
Texas	235.41	1,836,144	407,291	1,363,000	1,770,291
Utah	4.36	117,500	8,590	100,000	108,590
Washington	15.49	193,562	30,433	164,732	195,165
Wisconsin	24.63	117,500	48,519	100,000	148,519
Wyoming	0	117,500	0	100,000	100,000
Total	2,142.65	11,750,000	3,853,144	7,896,856	11,750,000

Obligations as of July 1, 1977, sec. 803, Railroad Revitalization and Regulatory Reform Act of 1976

Alabama	$383,490	New Mexico	152,219
Arizona	100,000	North Dakota	107,198
Arkansas	244,552	Oklahoma	196,800
Florida	192,000	Oregon	186,960
Idaho	44,000	South Dakota	100,000
Kentucky	170,156	Tennessee	18,200
Minnesota	50,000	Texas	1,363,000
Nevada	100,000	Washington	164,732
		Total	$3,573,307

TITLE IV FUNDS OBLIGATED OR COMMITTED AS OF JULY 1, 1977

	Subsidy	Accelerated maintenance	Alternate facility	Acquisition	Rehabilitation	Lease and taxes	Planning and program	Total
Connecticut	$139,385	$698,695		$41,109		$73,080	$120,739	$1,073,008
Delaware	379,137	589,685				176,456	81,447	1,226,725
Illinois	1,976,043	789,068				338,312	245,767	3,349,190
Indiana	1,759,514	2,592,411				1,275,496	366,448	5,993,869
Maine					$747,100		65,178	812,278
Maryland	1,124,114	484,083				351,180	76,090	2,035,467
Massachusetts	1,314,250	1,339,492				230,839	321,564	3,206,145
Michigan	7,190,212	724,120				1,305,348		9,219,680
New Hampshire	82,804	1,893,296		1,313,245			186,190	3,475,536
New Jersey	603,407	283,670	$36,720			556,225	242,274	1,722,291
New York	4,289,414	2,089,135	1,643,090		78,683	3,102,518	1,378,861	12,581,705
Ohio	2,152,215	2,194,692	107,580			712,540	816,568	5,983,595
Pennsylvania	2,177,518	2,072,214				929,547	603,886	5,783,165
Rhode Island	151,316	255,490		41,400	344,817	181,825	112,123	1,086,971
Vermont	160,917	745,065		1,244,000	1,259,175		93,753	3,502,913
Virginia	2,049,972	525,633				829,508	42,000	3,447,115
West Virginia							73,125	73,123
Wisconsin	1,540,802						148,911	1,689,710
Total	27,091,020	17,276,749	1,787,390	2,639,754	2,429,775	10,062,874	4,974,924	66,262,486

ATTACHMENT B

Strike the fourth sentence of Section 402(b)(1) of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762(b)(1), and the last sentence of Section 5(h) of the Department of Transportation Act (49 U.S.C. 1654 (R)), and insert in lieu thereof in each section the following:

As soon as practicable after the close of each fiscal year, the Secretary shall redistribute among all States except ineligible States and any State which chooses not to participate, the portion of the entitlement of any State which has not been approved for obligation by the Secretary during the previous fiscal year."

ATTACHMENT C—SECTION BY SECTION ANALYSIS OF THOSE PORTIONS OF S. 1793 PERTAINING TO THE LOCAL RAIL SERVICES PROGRAMS

Section 2(a) (1) and (2) revises the program year to coincide with the Federal fiscal year. In doing so, it extends the 90 percent period from twelve to fifteen months.

Section 2(a)(3) permits a State to carry forward to future years in-kind benefit credits which exceed the State's matching share for the year in which the benefits are provided.

The meaning of the remaining sentences of subsection (a)(3) is not entirely clear, but the bill can be interpreted as offering a compromise between the positions of the States and the FRA on the manner in which cost sharing charges from year to year. The FRA has ruled that the program year during which work is performed determines a State's matching share. The bill could be construed to mean that the date on which work begins would determine the appropriate State share for the entire project regardless of when the work is completed or funds are obligated. This should be clarified. The meaning of the third sentence is also unclear, but it appears that whenever a project exceeds the unobligated portion of a State's entitlement, the State would be permitted to complete the project at its own expense and seek reimbursement from future entitlement funds as they are appropriated and at the then prevailing matching share.

This seems to mean that where a state pursues the reimbursement route, it would receive such reimbursement at the existing rate. On the other hand, if it commenced a multi-year project, but did not use the reimbursement route, it would have the project funded at the rate in effect when it was started. Again, this should be clarified. In addition, because the phrase reads "the Secretary is authorized to provide" (rather than "the Secretary shall provide"), the bill appears to give the Secretary discretion to refuse to reimburse a State for costs incurred during a prior program year. The bill does not, however, provide the Secretary with any guidance. This discretion may not be intended by the drafters and would be inconsistent with the entitlement approach. In any event, it should be clarified.

Section 2(b) expands the eligible rail mileage which is used to determine a State's share of funds appropriated for local rail services assistance. The formula presently includes rail mileage concerning which the ICC has found that the public convenience and necessity permit the abandonment of or the discontinuance of rail service, and rail mileage eligible for assistance under Title IV of the 3R Act (45 U.S.C. 761–763). Under the bill, eligible mileage would also include rail mileage subject to pending proceedings before the ICC and mileage which a railroad has identified as "potentially subject to abandonment" or as a line for which a railroad plans to submit an application for a certificate of abandonment or discontinuance as those terms are used in section 1a(5)(a) of the Interstate Commerce Act (40 U.S.C. 1a(5)(a)). The bill offers railroads an incentive to allow their marginal lines to deteriorate and become eligible for the program to be maintained at Federal and State expense.

Section 2(c) expands the categories of lines eligible for assistance to include any unprofitable line. Taken literally, the amendment would not even require funds to be used on branch lines. If a mainline service were not profitable, it could be argued that the amendment would authorize a State to assist that mainline.

Section 2(d) permits a State to assist rail services on lines newly eligible for assistance under subsection 5(k) of the Department of Transportation Act ("D.O.T. Act"), 49 U.S.C. 1654, as amended by subsection 2(b) of the bill. These newly eligible services include lines identified as "potentially subject to abandon-

that the premium payments should be paid by the bankrupt estates would be borne by the Government.

Fourth, section 211(h) coverage of medical and life insurance premiums could result in demands for an increase in the $350 million authorization level for section 211(h) loans in order to permit timely payments of claims. In April, Conrail estimated that the addition of medical and life insurance premiums could increase the obligations to be funded under section 211(h) by $44 million. Of this amount, $33 million would be for the former Penn Central employees and $11 million would be for the former employees of the other bankrupt railroads. If the insurance premiums are determined to be proper obligations of the Penn Central estate, the Penn Central reorganization plan contains provisions which would result in its repayment of a sufficient amount of its section 211(h) loans to provide funds for its share of the increase in obligations as a result of such premiums. The attached chart demonstrates how timing of repayments by the estates could be critical to the adequacy of section 211(h) funds to cover medical and life insurance premiums as well as other section 211(h) claims.

Potential impact of S. 1793 on sec. 211(h)[1] funding requirements

[Estimated sec. 211(h) eligible obligations, net of available assets]

	Millions
Claims other than for insurance funding:	
PCTC	$340
Others	110
Subtotal	450
Medical and life insurance claims:	
PCTC	33
Others	11
Subtotal	44
Total	494
Less available 211(h) loan funds: Authorization	350
Shortfall to be met by debt rollover:[2]	
PCTC[3]	130
Others	14
Total	144

[1] Exclusive of interest on loans.

[2] Section 211(h) has a revolving fund provision whereby repayments can subsequently be paid out as additional loans.

[3] PCTC as part of its plan of reorganization has agreed that pending consummation of a plan, the Trustees will reimburse USRA for 211(h) loans paid for proper obligation of the estate by such amount (but not to reduce the principal balance thereof then outstanding to less than $243 million) as shall be necessary to enable USRA to make 211(h) loans (within the $350 million statutory limitation) to Conrail for 211(h) payments on behalf of PCTC or on behalf of other railroads in reorganization, provided that the principal amount to be outstanding at any one time in respect to such other railroads in reorganization will not be in excess of $107 million. If the insurance premiums are determined to be proper obligations of the Penn Central estate, a matter which has not yet been determined, the requirement that PCTC 211(h) obligation not exceed $243 million if the total $350 million is outstanding and the other estates have additional claims to be paid, would result in PCTC repaying the entire $130 million.

ATTACHMENT E

PETITION FOR RECONSIDERATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION

I. INTRODUCTION

Section 307 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("4R Act") requires the Interstate Commerce Commission ("Commission") to develop a new "uniform cost and revenue accounting and reporting system" for railroads. The 4R Act requires the new accounting system to provide "the most accurate cost and revenue data," including identification of operating an nonop-

Delmarva concept. A State would be permitted to expend funds in other States even though the shippers in the State expending funds do not benefit. In addition, it should be noted that since Title IV is repealed on April 1, 1978, pursuant to section 806 of the RRRRA, this provision will die with it.

Section 5(a). This amendment adds a new subsection (10) to section 1a of the Interstate Commerce Act as a companion change to the "cooperative assistance proposal" provisions of proposed new section 5(n) of the D.O.T. Act. The apparent purpose of proposed subsection 1a(10) is to direct the ICC to permit an abandonment or a discontinuance within thirty days of receipt of an application therefore whenever a State, within ninety days of receiving a cooperative assistance proposal from a railroad pursuant to section 5(n) of the D.O.T. Act, has not offered a rail service continuation payment designed to cover ninety percent of the difference between the revenues from the line and the avoidable costs of providing service on the line plus a reasonable return on the value of the line. The ICC is also required to permit a discontinuance or an abandonment within thirty days of receipt of the railroad's application if a rail service continuation payment is not made when due. It is not clear if the railroad may file its abandonment or discontinuance application within the ninety-day waiting period.

Section 1a of the Interstate Commerce Act currently requires the railroad and the ICC to undergo an elaborate procedure whereby the railroad must identify a line as potentially subject to abandonment at least four months before an application for an abandonment or a discontinuance is filed. Upon filing for an abandonment or a discontinuance the railroad must comply with various notice requirements designed to insure that all affected persons will be able to make their interests known to the ICC. The ICC must wait at least sixty days after an application is filed before it can issue its findings. During that time, the ICC can investigate the merits of the railroad's application.

By directing the ICC to decide an application in the railroad's favor, the bill circumvents the existing provisions of section 1a. Furthermore, there is nothing in the bill to prevent a railroad from using the new subsection 1a(10) as an expedited abandonment procedure.

ATTACHMENT D

There are four problems with section 4(f) of S. 1793 that the Committee should consider. The first two require amendments to the bill.

First, the scope of the bill should be narrowed to cover only pre-conveyance retirees. The reference to persons described in section 211(h)(1)(A)(viii) is too broad in that it would also include active employees and post-conveyance retirees. Active Conrail employees and post-conveyance retirees do not have, as a matter of contract law, any pre-conveyance accrued rights to coverage under medical and life insurance policies in their retirement years and Conrail does not maintain such coverage for its non-agreement retirees.

Second, the wording of the bill suggests that the insurance policies are still in effect and that Conrail would be able to make the premium payments as they fell due. In fact, the case of the Erie Lackawanna Railway and the Central Railroad Company of New Jersey, the insurance coverage has terminated unless the employee continued to pay the portion of the premium payments previously made by his employer. The bill should be amended to allow Conrail to purchase insurance or otherwise provide medical or life insurance benefits at the same or approximately the same level as were provided prior to April 1, 1976, and to pay claims for benefits where insurance coverage had been permitted to lapse.

Third, there is some risk that section 211(h) loans made pursuant to the amendments made by the bill will not be recovered from the bankrupt estates. The bill would treat the amounts needed for premium payments as valid administration obligations of the bankrupt estates. This treatment would be inconsistent with the decision of the Sixth Circuit Court of Appeals holding that while retiree life and health insurance benefits represent valid contract rights against the Erie Lackawanna estate, such claims do not have status as administration expenses. This inconsistency could result in constitutional challenges unless Congress makes clear that the estates' obligation to repay the section 211(h) loans would be subject to a determination that, under prior law, the benefit obligations were valid claims against the estates. After the making of section 211(h) loans to pay the premiums, the burden and risk of the litigation

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revised USOA be "cost effective." Accordingly, DOT urges the Commission to reconsider its decision to delay the revision and inclusion of all supporting schedules in the newly adopted USOA.

III. DISCUSSION

All three of these suggested areas of reconsideration are related to the question of cost center accounting. The Commission has already recognized that cost centers must be incorporated in the USOA in order that it comply with the 4R Act. When that change is made, we expect that the problems of the numerous and arbitrary allocations and the supporting schedules will be reduced. We believe the Commission cannot, consistent with its responsibilities under the 4R Act, adopt a revised USOA until these issues are resolved.

Section 307 of the 4R Act requires the Commission to develop a USOA which is "*cost effective*, nonduplicative, and compatible with the present and desired *managerial and responsibility accounting requirements of the carriers . . .*" (emphasis supplied). The USOA adopted by the Commission is not a managerial and responsibility accounting system. Rather, the USOA could more properly be characterized as a functional or activity-oriented accounting system that does not coincide with the responsibility accounting systems generally in use by the industry.

The USOA, as adopted, requires accounts to be kept by function (*e.g.*, maintenance-of-way, maintenance of equipment, etc.). A responsibility accounting system is based on data collected in accordance with the control or responsibility of a particular employee. While the area of responsibility of that employee may accidentally coincide with a function enumerated in the new USOA, it is more likely that an employee's responsibility will cut across more than one function. To the degree that this overlapping occurs, needless and arbitrary data allocations will have to be made. Thus, not only does the Commission's functionally-oriented matrix not comply with the explicit mandate of the 4R Act, it also needlessly calls into question the accuracy and "purity" of the data being reported. The USOA is the vehicle that will provide expense and revenue data for all users of that data. As such, the data must be collected and recorded without resorting to more allocations than are absolutely necessary.

DOT believes that only a cost center approach to accounting can fulfill the statutory requirement that the new USOA be compatible with the managerial and responsibility accounting systems of the carriers. In order to fulfill that requirement the cost center approach must be an integral part of the USOA, not an appendage to be added later. The lack of a cost center orientation also necessitates substantially more data allocations than are necessary, casting the accuracy and reliability of the data being reported into doubt. The revised USOA thereby violates the mandate of section 307 that the revised USOA yield "the most accurate cost and revenue data [that] can be obtained." Further, requiring the railroads to implement one accounting system now, and another, significantly different one, after cost centers have been included, is clearly not cost effective. Thus, the needless delay in implementing cost center accounting violates virtually all of the requirements of section 307.

Finally, failing to announce now the content and form of the supporting schedules makes it almost impossible to judge whether the USOA will provide the Commission with all of the data needed to fulfill its new regulatory responsibilities under other sections of the 4R Act.

The Commission seeks to excuse its failure to implement a USOA that clearly complies with all the requirements of the 4R Act on the language of section 307 that indicates the statutory mandate must be followed "to the extent possible." The Report and Order concludes that "the qualifying phrase, 'to the extent possible,' indicates that the concepts of cost effectiveness, nonduplication, and compatibility were not designed to be overriding requirements restricting systems design" (at 19). The Report and Order concludes that even though cost centers are needed to meet fully the requirements of the 4R Act, there was insufficient time to consider how to implement cost center accounting and, therefor, the USOA, as adopted, is acceptable under the qualifying phrase.

DOT asserts that this is not so. It was and is perfectly possible to implement cost center accounting in the USOA before January 1, 1978—the statutory effective date for the new USOA. The NPRO had taken some important steps toward implementing cost center accounting when it was published for comment almost a year ago. Since that time the Commission has taken a backward step, deleting all references to cost center accounting from the USOA as adopted.

Sufficient time remains before January 1 to return to at least the fundamentals of cost center accounting. Since the Commission recognizes that without a cost center orientation the revised USOA does not fulfill the requirements of the 4R Act, we strongly urge the Commission to reconsider and reverse its decision and adopt a USOA founded on cost centers and responsive to the statutory mandate the Commission seeks to fulfill.

Respectfully submitted.

LINDA HELLER KAMM,
General Counsel.

[The following information was subsequently received for the record.]

Hon. JOHN A. DURKIN,
U.S. Senate, Washington, D.C.

DEAR SENATOR DURKIN: Enclosed are the answers to several questions raised as a result of my testimony of July 29, 1977, before the Surface Transportation Subcommittee of the Committee on Commerce, Science, and Transportation and for which answers were to be supplied for the record.

If there is any further clarification or information needed, we will be pleased to supply it.

Sincerely,

JOHN M. SULLIVAN,
Administrator.

Enclosures.

Question 1. Chairman O'Neal has just testified in favor of extending the 100 percent Federal assistance year in both the Northeast and national programs. In his testimony, he refers to the slow start-up of programs, difficulties in dealing with the bankrupt Northeast railroads, and a clear Congressional intent that some rehabilitation and maintenance be performed under 100 percent subsidy. State rail officials on Monday and in their submitted testimony today painfully describe an endless array of bureaucratic delays and overburdensome federal rules concerning State plans and suitable State projects—regulations which took a long time for the FRA to formulate.

On the basis of this, how can you testify in favor of denying the Northeast States any significant funds at the 100-percent level of funding?

Answer. I believe that the 100 percent funding period was intended to enable States to participate in the program while they secured funding for their matching shares and organized their staffs. Committee reports on what was eventually enacted as the 4R Act offer support for this position:

"When approving the Act in 1973, Congress recognized that some period of adjustment would be needed, providing a two year program through which assistance would be given to the States and communities to continue local rail services that was jeopardized by the FSP.

"Nearly all of the States in the Northeast/Midwest Region have informed the Committee that severe fiscal problems will make it difficult for them to participate fully in the assistance program" Report of the Senate Commerce Committee on S. 2718 S. Rep. No. 94–499, 94th Cong., 1st Sess., at 43 (1975).

"One of the major problems presented to the Committee was the difficulty that State, local communities and shippers face in meeting the non-Federal share of the subsidy program.

"Under the Act, the rail service subsidy program was to run for two years with a 70 percent Federal share and a 30 percent State, local, or shipper share. The reported bill extends this program from 2 to 4½ years. The Federal share for the first six months will be 100 percent; for the succeeding 12 months the Federal share will be 90 percent; for the next 12 months it will be 70 percent; for the following 12 months it will be 50 percent; and for the last 12 months it will be 30 percent. The revised program will ease the burden on States, local communities and shippers and provide for a longer transition period." Report of the House Committee on Interstate and Foreign Commerce on H.R. 10979, H.R. Rep. No. 94–725, 94th Cong. 1st Sess., at 97 (1975).

Approximately $43 million was spent during the 100-percent funding period. Further, based on a ruling by the Deputy Comptroller General of the United States (copy attached to my answer to question no. 6) projects for which funds were granted prior to April 1, 1977 will be reimbursed at the 100-percent Federal

share, thus, adding another $1.1 million, for a total of $44.1 million. As all of the Northeastern States are currently participating in the program despite the 10-percent matching share requirement, we see no need to extend the 100-percent subsidy period.

The effect of the matching requirements is to encourage more responsible State and local decisions since States and localities will have an immediate financial stake in the programs selected. This helps to effectuate Congress' desire that States be involved "in the start-up and policymaking of the subsidy program an integral provision in the Regional Rail Reorganization Act of 1973." (H.R. Rep. No. 94–725, at 97.) Further ,while the matching share requirement expands the scope of State involvement in the program, Federal participation does not change. Each State's entitlement remains the same regardless of the matching ratio.

With respect to the contention that there were delays in the start-up of the Northeast program, I believe that regulations under Section 402 of the 3R Act, were issued in an extremely short period. The 4R Act, substantially revising Section 402 of the 3R Act, was signed into law February 5, 1976. One month later, FRA issued revised final Section 402 regulations. That those regulations were issued so quickly was the result of an extraordinarily concentrated effort on the part of FRA. Most importantly, yet often lost sight of, is that except in a few instances where unusual problems beyond the control of either FRA or the particular States, there was no discontinuance of those services which the States desired to subsidize.

Question 2. What were some of the delays involved in approving State rail plans?

What are some of your requirements for States? Why did it take a year or more in some cases to get planning funds to the States.

Answer. There were not any significant delays in approving State rail plans in the Northeast. All eligible States under Section 402 except West Virginia had plans approved to April 1, 1976 (most submitted these plans in December, 1975). With respect to Section 803 States, none have yet submitted a State rail plan. Proposed regulations were issued in August, 1976. Funds for the Section 803 program were appropriated on June 1, 1976, in Public Law 94–303, the second supplemental appropriation act of 1976. The first application was received in September and most were received in January, February and March of 1977 and approved in April of 1977. Thus, most States did not apply for funds until approximately one year after passage of the 4R Act.

In turn, most applications were evaluated and approved by the FRA in less than four months. While I do not believe the time periods involved were excessive, either on the part of FRA in processing requests or on the part of the States in submitting applications, I do feel that involvement in an entirely new program must necessarily entail more time than that required to participate in ongoing established grant programs.

Question 3. The Department of Transportation under the previous Administration was clearly disinclined towards the State programs. Your testimony today (p. 6) again reflects your view that the State program was to be temporary relief for the headache and heartache of abandonments. Yet Congress extended the program nationally, outside of the troubled Northeast, and the States have geared up to use this program as a major revitalization effort with a great potential for more sensible, localized rail planning.

Are the States wrong in their view?

In light of the massive number of lines indicated for potential abandonments by the system diagram maps filed this May, do you still view the State program as a temporary phase-out band-aid;

Answer. The local rail services assistance programs were originally intended to provide interim assistance to overcome the disruptive impacts on local communities from loss of rail service. The original purpose of the two year Title IV program was to cushion the effect on Northeastern communities of the massive abandonments sanctioned by the F.S.P. In the 4R Act, Congress revised the Title IV program and enacted the National program (section 5(f)–(0) of the Department of Transportation Act) in order to help communities throughout the nation to adjust to discontinuance and abandonments and to establish permanent solutions for their local freight problems.

In the 4R Act, Congress notes the temporary nature of the programs.

Sections 101(a)(4) of the 4R Act (45 U.S.C. 801(a)(4)) states that: "It is the purpose of the Congress in this Act to . . . [rehabilitate, improve, and

revitalize the national railroad system] through . . . transitional continuation of service on light-density rail lines that are necessary to continued employment and community wellbeing throughout the United States;"

Pursuant to Section 5(f)(4) of the D.O.T. Act (49 U.S.C. 1654) as amended by Section 803 of the 4R Act rail freight assistance may cover "the costs of reducing the costs of lost rail service." This is an indication that Congress intended the program to be a means to an end, not an end in itself. The ultimate purpose of local rail service assistance is to enable States, shippers, and railroads to develop a permanent economical means of providing transportation services to shippers. The fact that Section 5(k) of the D.O.T. Act permits a project to be assisted for only five years is further indication that Congress intended to provide short term assistance to ease the effects of an abandonment or a discontinuance of service and enable the shippers and the State to develop a permanent solution.

In its report on the Rail Services Act of 1975, while discussing the Title IV program, the Senate Commerce Committee states that: "When approving the Act in 1973, Congress recognized that some period of adjustment would be needed, providing a two year program through which assistance would be given to the States and communities to continue local rail service that was jeopardized by the FSP." Report of the Senate Commerce Committee on the Rail Services Act of 1975 S. Rep. No. 94-499, at 43-44.

The Report further notes that since the passage of the 3R Act, the Committee has found that the long term rail needs of the region require a continuing program to maintain local rail services providing benefits that far outweigh their operating costs. For that reason, the Committee developed a multi-year assistance program to enable communities and shippers to operate and revitalize lines and to plan for orderly economic development. The Committee added a national program because the problems of uneconomical branchlines are reflected throughout the nation. The national program is intended to prevent the irreparable reduction in needed portions of the national rail system. In addition, the Committee did not believe that the ailing railroad industry should be forced to internalize all losses from branchline operations. The responsibility for decisions on local rail service needs properly rests on State and local officials.

In its report on the Railroad Revitalization and Regulatory Reform Act of 1975, the House Committee on Interstate and Foreign Commerce also recognizes the transitional nature of the Title IV program. Report of the House Committee on Interstate and Foreign Commerce on the Railroad Revitalization and Regulatory Reform Act of 1975 (H.R. 10979) (H.R. Rep. No. 94-725, at 96-98). In its discussion of the Title IV program, the Committee notes that the extension of the program to 4½ years was intended to "ease the burden on States, local communities, and shippers and provide for a longer transition period." (p. 97) Unlike the Senate, the House Committee contemplated an assistance program for the regional States only. Consequently, the House Report does not discuss the national program.

The floor debates on the 4R Act contain similar indications of Congress' desire to create a transitional program to meet a short term need.

In his statement in support of the Rail Services Act of 1975 Senator Bayh discusses the relationship between the percentage of Federal participation in the program and the ability of States to avoid hard decisions during the initial phases of reorganization. While the Senator supported the legislation generally, he opposed the 100 percent Federal subsidy period and urged that the subsidy program be for a total of three not five years, thus recognizing its transitional nature.

Question 4. You've emphasized federal control over the State projects funded, and in your testimony have worried about State projects undertaken without a federal review "to determine whether a proposed improvement is cost effective." (p. 10)

Do you disagree with Congressional intent to create a *local* assistance program with the States picking their own projects based on their own needs?

Why do you assume that States and State rail officials will be any less competent or cost-efficient than federal officials in choosing projects on which to spend a limited amount of federal funds? What about the incentive to economize on the portion which States themselves contribute?

Answer. The States do select those projects which they desire to support based on the criteria they develop as part of the State rail planning process. FRA

takes no role in project selection. Our primary interest in reviewing the State selected projects is in carrying out the Congressional mandate that "all branch-line rehabilitation projects should be carefully considered on an individual basis to determine whether a proposed improvement is a cost-effective freight transportation project." (Report of Conferees on fiscal year 1978 Department of Transportation Appropriations Act, House Dept. No. 95–470, June 29, 1977, p 8).

We do not assume that States and State rail officials are less cost-efficient or less competent than Federal officials. We recognize that they are trying as hard as they can to stretch funds as far as possible. We believe they are doing an excellent job. We must recognize, however, that when funds are appropriated to FRA for expenditure, it is to us that the Congress, the GAO, the Administration and the public turn for accountability.

Question 5. Your testimony opposes a provision in S. 1793 to allow the States to commence projects in advance of receiving federal fund commitment.

Doesn't it make sense, from the viewpoint of expediency, to have a State agree generally to conform to these policies at the beginning of each funding year, rather than hold up work and receipt of funds by demonstrating compliance for each project individually?

Answer. We concur as to the desirability of overall agreement to comply with policies on a broad program rather than project-by-project basis and we have attempted to accommodate this approach in our regulations governing both applications and in-kind benefits and in our multi-purpose grant agreements. The States may presently apply for, and receive, approval of large numbers of projects as part of one grant agreement.

For example, in a current New York grant amendment, FRA is approving operating subsidy for 29 lines; acquisition of property for construction for three new rail connections; rehabilitation of one line to operating speed of 40 mph; and payment for State costs of administering the program. We would not want States to commence projects in advance of funding commitments, however, because the law contains many requirements which must be complied with if a project is to be eligible for assistance. There are also many statutes of general applicability, such as the Civil Rights Act, which must be enforced by FRA. If States undertake projects without first securing FRA approval, it is quite possible that an otherwise eligible project will not be eligible for assistance due to a failure to follow a statutory requirement which could have been easily corrected before the fact.

Question 6. In a memorandum to Northeast program States dated January 6, 1977, and to National program States dated January 7, 1977, your counsel took the position that work had to actually be completed in a funding period to be reimbursed at that level. The bill before us is designed to reverse your counsel's decision.

Does the January opinion still represent the legal view of your Administration?

How do your regulations currently deal with costs obligated by the State in one federal funding period, say 90 percent but incurred in the next lower funding period, say 80 percent?

Would you give us your view of the term "date of initiation of a project" as used in S. 1793, and give us an example of its use as you read the bill?

Answer. By letter of July 29, 1977, the Deputy Comptroller General of the U.S. replied to our request for an opinion on the method of determining the Federal share of reimbursement for capital costs incurred in the local rail service assistance program. A copy of the letter (B–175155) is attached. The Deputy Comptroller General ruled that ". . . provided that the Department establishes a method to assure that grantees are not undertaking commitments beyond their immediate capacities in order to take advantage of the higher share of Federal assistance . . ." they have no legal objection to our recommendation that the Federal share of the costs of capital projects should be determined on the basis of matching period in which the grant agreement or amendment thereto is entered into with respect to any given project. We construe this to mean that while operating assistance will be funded on a cost-sharing basis determined by when the subsidy is performed, projects, other than subsidy, such as acquisition, rehabilitation, substitute facilities and new connections, will be funded at the Federal share in effect when the grant or the amendment thereto is made.

A number of grant agreement amendments were made during the 100-percent year with the understanding that when the Comptroller General ruled, the grant

agreements or amendment would be modified to reflect that ruling. In light of the Comptroller General's ruling, we believe there is no need to extend the 100-percent Federal funding period.

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 29, 1977.

File: B-175155.

Matter of: Local rail service assistance programs—declining Federal matching share provisions.

Digest: In the absence of a definitive statement of the method for determining the Federal share of reimbursement for captial costs incurred in rail service assistance programs authorized by sections 402 and 803 of the Railroad Revitalization and Regulatory Reform Act of 1976, GAO believes that the Federal share should be determined on the basis of the year in which the grant agreement (or amendment thereto) becomes effective.

This is in response to the request of the Deputy General Counsel of the Department of Transportation (DOT) for our decision concerning the application of the Federal—non-Federal matching share provisions of section 402(a)(1) of the Regional Rail Reorganization Act (RRRA), Public Law No. 93-236, 45 U.S.C. § 762(a) (Supp. V, 1975), as amended by section 805(a) of Public Law No. 94-210, 90 Stat. 139 (Feb. 5, 1976), 45 U.S.C.A. § 762(a) (June 1976 Supp.) and section 5(g) of the Department of Transportation Act (Public Law 89-670), as added by section 803, Public Law No. 91-210, 90 Stat. 130 (Feb. 5, 1976), 49 U.S.C.A. §1654(g). The former provision will be referred to hereafter as the "section 402 program" and the latter as the "section 803 program."

Both the section 402 and section 803 programs were created by the Railroad Revitalization and Regulatory Reform Act of 1976 (RRRA3, Public Law No. 94-210, id. They provide, in substantially the same manner, for a declining Federal share in local rail services subsidies and assistance programs over a period of years beginning April 1, 1977, in the case of the section 402 program (the date rail properties were conveyed pursuant to 303(b)(1) of the Regional Rail Reorganization Act) and beginning July 1, 1976, in the case of the section 803 program.

The pertinent portions of these two statutory provisions are as follows:

Section 402 program: "(a) General.—(1) The Secretary shall provide financial assistance in accordance with this section to assist in the provision of rail service continuation payments, the acquisition or modernization of rail properties. * * * The Federal share of the costs of any such assistance shall be as follows: (A) 100 percent for the 12-month period following the date that rail properties are conveyed pursuant to section 303(b)(1) of this Act; and (B) 90 percent for the succeeding 12-month period."

Section 803 program: "The Federal share of the costs of any rail service assistance program shall be as follows: (1) 100 percent for the period from July 1, 1976 to June 30, 1977; (2) 90 percent for the period from July 1, 1977 to June 30, 1978; (3) 80 percent for the period from July 1, 1978 to June 30, 1979; and (4) 70 percent for the period from July 1, 1979 to June 30, 1981. * * *"

The Deputy General Counsel asks two questions:

"(1) How should the federal share of the costs of an assistance program be determined where the grant is made during the period of 100 percent federal funding (i.e. prior to April 1, 1977) and the work for the capital project which is the subject of the grant is performed in whole or in part after April 1, 1977, when the 90/10 cost-sharing provision goes into effect? (2) Can a grant be made for 100 percent of project costs prior to April 1, 1977 for an acquisition to be made after April 1, 1977, provided the contract to buy is made before that date?"

The Deputy General Counsel provides the following description of the programs involved:

"The section 402 local rail services subsidy program under the RRRA is part of the process of implementing the restructuring of the bankrupt railroads in the northeast and midwest. On April 1, 1976, the Consolidated Rail Corporation ("Conrail") and other profitable carriers took over the operations of those portions of the bankrupt lines determined to be continued under the Final System Plan adopted under the RRRA. Service on those lines not taken by Conrail or the other carriers could be discontinued and the lines abandoned under section 304 of the RRRA (exempt from the usual proceeding before the Interstate Com-

merce Commission ("ICC")), unless subsidies were offered to cover the deficits, pay lease payments to the estates and pay an appropriate management fee. Under section 402 states are entitled to a share of program funds based on eligible mileage in the state to carry out a comprehensive local rail services program including planning, subsidies, modernization of eligible facilities, acquisition of lines and rail banking for future rail use. The program continues for two years from April 1, 1976. At that time section 402 lapses (see section 806 of the RRRA) and the program becomes part of the section 803 program.

"The section 803 program is a 5-year program of local rail service assistance to states substantially similar to the section 402 program. Lines permitted to be discontinued by the ICC, and those eligible under the section 402 program when that program ends, can be assisted. * * *

"With respect to operating subsidies, including necessary allowable ongoing maintenance, the grant for the 100 percent period is limited to activities concluded during the 100 percent subsidy period as distinguished from those performed during the 90 percent period beginning April 1, 1977. In the planning and capital grant areas for other allowable activities, however, there would seem to be no reason why grants made prior to April 1, 1977 and for which the states make binding commitments prior to such date, cannot be funded at the 100 percent rate regardless of when the work is performed or the acquisition made. All kinds of construction delays normally occur. Similarly, all kinds of delays occur in connection with the clearing of title in bankruptcy cases."

The Deputy General Counsel recommends the following resolution of his question:

"The issue [of the applicable Federal share] arises because it is unclear what Congress intended to be used as the reference point for determining the period to which assistance is attributable for cost-sharing purposes. For example, the point could be (1) the effective date of the grant agreement or amendment thereto between FRA and a state providing assistance to the particular project in question; (2) the date the grant is paid by FRA; (3) the date a commitment is made between the state and a subcontractor; or (4) the date the work is performed. The usual reference point used by a grant assistance agency would be the effective date of a bona fide grant agreement or amendment thereto between FRA and the state providing for assistance to the particular project in question. Administratively, it is impossible for the government to establish a uniform and reliable procedure for determining when work is performed. Further, states may be unable to undertake projects or to plan effectively for their investment if they are unaware of their own financial liability due to potential for inadvertent delays beyond April 1 (or June 1 under section 803) in each year in which the share changes.

* * * * * * *

"[t]he legislative history does not definitively answer our questions. Given the absence of a definitive statement of congressional intent, we believe we are justified in interpreting the provisions in question in a manner that is not inconsistent with the language of the statute and best provides for an administratively workable program. We, therefore, believe that the federal share of the costs of capital projects should be determined on the basis of the year in which the grant agreement or amendment to such agreement providing assistance to the project became effective."

We have reviewed the legislative history of these provisions and have found very little discussion on this point. In no event can the discussion be said to be definitive of the means of determining the Federal share of assistance.

Although funds are obligated or "reserved" at the time a binding commitment is made by a grantee with a third party to supply goods or services, generally a cost would not be viewed as having been incurred by a grantee until it becomes liable to the third party to pay for such goods or services.

However, under the language of the statute, the Federal share of assistance in this program need not be determined with reference to when costs are incurred. In the case of the capital improvement program, as we understand it, separate grants are made for the purpose of accomplishing each discrete project. The amount of Federal support is determined on the basis of budget estimates for accomplishment of the whole project at the time the grant is made, whether it takes one year or several years to complete the project (within the maximum time allowed by the grant agreement, of course). Thus while periodic

payments to the grantee from the grant are generally made on the basis of costs incurred, this does not affect the total support available for the project which is determined at the time the grant was made.

Accordingly, provided that the Department establishes a method to assure that grantees are not undertaking commitments beyond their immediate capacities in order to take advantage of the higher share of Federal assistance, we have no legal objection to the Deputy General Counsel's recommendation that the Federal share of the costs of capital projects should be determined on the basis of the year in which the grant agreement (or amendment thereto) is entered into with respect to any given project.

R. F. KELLER,
Deputy Comptroller General of the United States.

Question 7. You have testified against any need for a dollar ceiling on funds authorized for planning grants in light of the fact that Congress contemplated planning by States to take place early in the program, would you oppose funding all planning at a 100-percent Federal level? Why?

Will any of the $3.6 million obligated for State planning in the National program be at a 100-percent funding level? Why not?

Do you think this violates the Congressional intent for the program?

Answer. By letter of July 29, 1977 (a copy of which is attached to Answer No. 6 above), the Deputy Comptroller General ruled that funds may be expended at the cost sharing rate in effect when the grant agreement or amendment thereto is in effect. This means that all planning grants in the national program executed prior to July 1, 1977 will be funded at the 100-percent Federal share. Only the Iowa grant was executed by FRA later than July 1, 1977.

In light of the GAO ruling, we believe that our approach is in accordance with Congressional intent. We would oppose funding all future planning at the 100 percent level for two reasons. First, there is no reason why planning should not be at the same matching share as other program elements, particularly in light of the availability of in-kind benefits to meet matching share requirements. Second, many of the grantees will be able to substantially complete their initial plans with the funds now granted even though the work will continue over at least two and possible three matching share periods. The later updates will, of course, require additional funds. There is no reason, however, why the matching share concept should not apply when these updates are made.

Question 8. Every witness before this subcommittee has submitted testimony opposing the summary abandonment provision for "cooperative assistance" proposals under S. 1793. So you're in good company.

However, very few witnesses are opposing the S. 1793 provisions to extend to the States the option to consider lines slated for or potentially subject to abandonment in formulating appropriate State investment of funds.

If the States operate with a fixed amount of grant money, what is your concern with allowing them choice of lines to save?

Why do you oppose giving the States this discretion to choose from wider alternatives?

Isn't it true that many of the lines already abandoned are among the worst opportunities and investments for states to make?

The ICC and the states have argued vigorously in favor of allowing states to save lines before they deteriorate into great disrepair and thus cost much more to rehabilitate and operate. How do you respond to this cost-effectiveness contention?

Answer. This question (or rather series of questions) constitute the most significant issues raised by the proposed legislation. As I indicated at the hearing, we believe such an expansion would, at this point, be premature. Among the major problems we see with the provisions in S. 1793 which expand eligibility are the following:

(*a*) Since the eligible mileage will be increased very substantially (from approximately 11,000 to over 27,000 miles), the amendment would be likely to have an expansionary effect on budget requirements.

(*b*) Another financial impact to note is that the provisions in the bill would set a precedent for funneling public grant funds into private sector rail operations. As the Committee is aware, the Title V program under the 4R Act, for assisting railroads is a loan program. It is not clear why private sector

deteriorating branch lines would merit the more direct Federal support in the form of grants. In addition, it would be extremely difficult, if not impossible, to protect against windfalls to, and disinvestment by, private rail carriers receiving grant funds from the States. Under such an expanded program, all private carriers regardless of their profit position would be eligible for assistance.

(*c*) Further disadvantage to the proposal is that it would enable a railroad to significantly affect a State's entitlement solely by diagraming a line. Since the act of diagraming a line costs the railroad and the State nothing, except for the potential adverse psychological impact on shippers, there are obvious possibilities for funding inequities occurring between States.

(*d*) Finally, railroads would have an incentive to allow their lines to deteriorate and to thus become eligible for maintenance at Federal and State expense.

Question 9. Your testimony emphasizes the 901 and 504 studies as a means of rationalizing the national rail system as a whole.

How does this account for state rail planning?

Are you making efforts to incorporate State input into your studies? How?

Answer. I believe that the Federal Government and the States have different responsibilities that overlap in part. The Congress, in the 4R Act, charged the Secretary to examine the character of transportation policy towards the various modes, the condition of the American railway system and its prospects for improvement, and the capital needs of the rail system through 1985, and—based on these factors—to determine any role that the Federal Government should play in assisting the industry to meet those needs. We view this as a major policy planning effort, not as a system planning or abandonment report. The role prescribed for the states by the 4R Act, on the other hand, is one of developing a State rail system plan within the context of the administration of the local rail service continuation subsidy program. These are fundamentally different responsibilities and they involve very different types of planning and analysis. They do have two points in common, however. One is the question of the size and location of the light density rail line problem and the methods proposed for handling it. A second relates to the problem of rail system structure in those areas where there is significant excess rail fixed plant capacity, such as in the Midwest—Granger State region.

In reference to part two of your question, specifically, we have briefed the Executive Committee of the National Conference of State Railway Officials on our conceptual approach to the studies. These briefings will continue. We have been in touch with representatives of New England both to cooperate with them in formulating a work plan for examining restructing alternatives for the New England rail system and to evaluate that region's proposal for public ownership of rail right-of-way. Our future plans involve working with the Granger States to examine rail system problems in that region and working with all the States when we get the preliminary results of our analysis of the extent and location of the light-density line problem.

Question 10. Do you see the State program as a viable means of infusing funds into branch lines and smaller main lines to enable them to carry coal to ultimate consumers such as factories along the lines?

Answer. The program could be used for this purpose if States choose to set their priorities so as to give heavy weight to this type of coal traffic when deciding which branch lines to subsidies. Such shipments to small industrial consumers usually would not be large enough by themsleves to justify funding for continuation of operations, although, if there is other traffic on the line as well, it might be a valid candidate for subsidization without a weighting system favoring coal.

Question 11. At various times, and I suspect shortly again, State officials have criticized the FRA's participation in this program as (1) understaffed; (11) an exercise in benign neglect; (111) plagued by internal inconsistencies and conflicts between FRA and the Secretary's Office, and with OMB. Would you comment on the accuracy, in whole or in part, of these criticisms?

On the issue of FRA delay, would you be opposed to statutory time requirements for processing applications similar to the kind imposed on ICC for processing abandonments?

To what extent are your judgments today and in the foreseeable future as railroad experts colored by the constraints placed on you by OMB?

Answer. We recognize that the program has had some delays and that some States are frustrated. But, the very dissatisfaction of the States with the eligibility criteria shows that we are not alone in our concern with the manner in which we invest large amount of funds in lines which would otherwise be abandoned.

On the issue of understaffing, naturally all new programs have start-up problems. In addition, the Section 402 program was originally only for two years. It is difficult to justify large levels of staff for interim programs.

The reference to "benign neglect" is not valid. As evidence, I offer the following:

(*a*) When the 4R Act was passed on February 5, 1976, FRA had less than two months to provide the Regional States with the necessary guidance to enable them to protect local rail service on the date of the implementation of the Final System Plan on April 1, 1976. Regulations were published on March 5, 1976. In spite of the compressed timetable, all service designated to be operated by Con-Rail was continued without interruption on April 1, 1976. In addition, in most other instances, service was continued by other carriers by means of directed service orders, operating agreements or on a voluntary basis pending completion of negotiations on agreements;

(*b*) In the Regional Program, FRA approved a total of over 60 operating agreements between States and rail carriers providing subsidized service under the program during the last two program years. In addition, FRA approved leases between eight States and trustees for four bankrupt estates in the Northeast. Further FRA field inspections for accelerated maintenance purposes have been performed on 45 lines in 16 States;

(*c*) Over 92 percent of the funds appropriated for fiscal year 1976 and the transitional quarter were granted to the States before the end of the transitional quarter on September 30, 1976; and

(*d*) An extensive effort to prepare the States and to help them lay the groundwork for the kind of comprehensive rail transportation planning required by the Act through an intensive program of training seminars, conferences, and meetings was begun early in the program by FRA. In one instance, FRA and the Council of State Governments jointly sponsored a series of five regional rail planning seminars in five locations throughout the country. These were primarily designed to provide information on State rail transportation planning for representatives of public agencies and other organizations having responsibility for the State rail planning process. They also served to explain Federal requirements to States entering the program under Section 803.

Similarly, FRA has made available to the States the training programs of its Transportation Safety Institute in Oklahoma City. Representatives of designated States agencies have had two opportunities to attend week long courses devoted to track standards and related topics. Those attending having judged the courses to be excellent instruction. Other technical aids include manuals for use by State rail personnel.

On November 12, 1975, FRA issued an initial Program Manual designed to assist States seeking assistance under Section 402. This manual, essentially a "How To" guide for applicants on the application process and project development and monitoring, is currently being revised and expanded. When re-issued, it will be more informative and will cover Section 803 as well.

FRA has also undertaken to provide a comprehensive Rail Planning Manual for the States. Volume I Guide to Decision Makers, and a Bibliography have already been made available. Additional chapters governing technical approaches to rail planning are underway on the following topics: light density analyses; special studies; participation and coordination; implementing the State rail plan; rail planning and the statewide transportation planning process; and, mainline studies.

We do not understand the reference to "internal inconsistencies". If the reference is to the unusual problems confronting a Federal agency administering a grant program where for-profit firms are paid to haul freight to other for-profit firms over the lines of other private firms, we agree that the program presents unusual problems. However, we believe that its unique nature has brought this about; and we are continuing to work very hard to develop a consistent and comprehensive set of policies which can help the States in accomplishing their program goals.

We have not been in conflict with DOT and OMB. We do have the usual routine clearances of regulations, but there have been no delays or conflicts stemming from them. We did have a delay in connection with the Penn Central lease where the danger that the valuations established for lease purposes would impinge on the main valuation case resulted in our asking Congress for legislation on the point. Under Section 205 of the "Rail Transportation Improvement Act," Section 304(d) of the 3R Act was amended to help resolve the matter.

Question 12. The present law, and S. 1793, fix the funding match period according to some action taken by the States, whether it be obligation to a project or expense of funds. In your testimony (p. 9) you recommend that the matching share period be keyed to "the time the funds are obligated to the State" by FRA.

Why are you proposing this fundamental change in the program?

Wouldn't this change give budget-conscious FRA administrators full control over the federal matching percentages, impairing State's abilities to plan ahead on use of funds?

Answer. Normally, in Federal grant programs generally, where the matching shares are fixed, the date of obligation sets matching shares for that grant. If the matching ratio is later changed, the funds obligated at the old rate would remain at that rate. Any new funds added to the project would be at the new rate. In accordance with this practice, we recommended to the GAO and to the Committee that we follow the general practice and determine the matching share on the basis of the period when the obligation is made.

By letter of July 29, 1977 (attached to Answer No. 6), the Deputy Comptroller General approved our recommendation. We believe that it is the most practical and efficient approach. In addition, it is probably the most equitable as most of the funds should be obligated early in each program year and be sufficient for that year's work. This would accomplish the intent of the Congress that the non-Federal share increase as each program year passes.

Your concern that "budget-conscious FRA administrators" would have control over percentages is not, we think, a potential problem. Presumably, we could refuse to approve an application so that it would go over into a lower percentage year. However, that would result in the total collapse of the project because all unapproved balances at the end of each fiscal year are redistributed to all States and if a grant is held up for the reason you suggest, the grantee would wind up on redistribution with only a fraction of the amount not granted. In fact, our experience has been that we have worked very hard each September to assure that everyone has a fair chance to have the necessary funds obligated so that they are not redistributed away from them. We can assure the Committee that we are continuing this practice and that we expect to be able to process all necessary grants on a timely basis.

Question 13. Senator Pell testified this morning in favor of giving the Federal government the full expense, rather than a 50 percent share, of non-operational improvements on the Northeast Corridor. You have opposed these provisions. Are they improvements required by law, or are they the State's choices entirely?

Answer. Section 703(1)(B) of the 4R–Act requires that improvements be made to non-operational portions of stations, as defined by the Secretary. Thus, while the improvements are not specified by law, the Secretary is directed by statute to define them. In defining them, the Secretary is consulting with Amtrak and State, local, and regional transportation authorities. Each State in the Northeast Corridor necessarily has some choice in the non-operational improvements to be made in its stations because the improvements will not be made unless the State or a local or regional transportation authority is willing to pay 50 percent of the cost or unless the improvements are safety-related.

Senator DURKIN. We have the group of State officials, Mr. Elkins, Frances Shaine, Mr. Kinstlinger, Mr. Rossi, Mr. Stangl.

We are more interested in the information rather than the formality.

For openers if each individual would identify themselves for the record.

STATEMENT OF CLIFFORD ELKINS, EXECUTIVE DIRECTOR, NATIONAL CONFERENCE OF STATE RAILWAY OFFICIALS, ACCOMPANIED BY FRANCES SHAINE, STATE RAIL PLANNER, STATE OF NEW HAMPSHIRE; JOHN R. KINSTLINGER, EXECUTIVE DIRECTOR, COLORADO STATE HIGHWAY DEPARTMENT; LOUIS ROSSI, RAIL GROUP DIRECTOR, NEW YORK STATE DEPARTMENT OF TRANSPORTATION; AND PETER STANGL, ASSISTANT COMMISSIONER, PUBLIC TRANSPORTATION, NEW JERSEY DEPARTMENT OF TRANSPORTATION

Mr. ELKINS. I would like to introduce the panel. Mrs. Frances Shaine, Mr. Louis Rossi, director of the New York State Rail Transportation Group, Mr. Jack Kinstlinger, executive director of the Colorado State Highway Department, and Mr. Peter Stangl, assistant commissioner for public transportation of the State of New Jersey.

I have testimony of Mr. William Harsh, who is in charge of the Illinois Bureau of Inner City Railroads. He has a statement and will be available for questions if you have any on his statement.

In the interests of time we will be brief and give you a brief summation of the points we have prepared in written testimony. Ms. Shaine will start off.

Senator DURKIN. Your entire statement and the statement of Mr. Harsh will be included in the record.

I would like to insert in the record the statement of Paul Reistrup, president of Amtrak.

Ms. SHAINE. I would like to call your attention to attachment A, which is a letter from the department of transportation of the State of Rhode Island in response to Mr. Swinburn's testimony. The State of Rhode Island has lost almost $1 million because of what they view as delays in the FRA process.

I'm the State rail planner for the State of New Hampshire and I have been working in rail planning since 1974. I'm sure that all of those who have shared my experience in the last 3½ years would tell you that the States agree with and among each other more than they disagree.

The perception of the rail problems from the Federal level that is differed widely from that shared by the people involved in planning and administration at the State level.

Further, most, perhaps all, of the States would concur in what I'm about to say. Federal railroad administration is the major Federal actor in the new governmental railroad management planning team, at least insofar as the planning and administration of State rail programs is funded by Federal dollars.

So, it is the FRA which deals daily with both planning and administrative personnel at State transportation agencies.

I should note that we are all aware that there is a new Secretary of Transportation, and a new Administrator of the FRA. Therefore, it can be expected that all of the ills which we perceive are not the fault of the current administrators of the agency.

Nevertheless, perhaps there are legislative means of remedying the problems which plague us all; or, as with morality, there may be no way to legislate philosophical change. But I believe that legislative intent, clearly stated, may be enough to convert some nonbelievers in the Federal bureaucracy to believers once again.

I'm addressing the State assistance problems with the FRA.

It appears that the problems are twofold: philosophical and administrative. Of these, the more important, obviously, are the philosophical biases which appear to have kept the FRA from dealing with the State railroad agencies as they should.

Three basic philosophical skews inhibit the Federal-State relationship from benefiting the critical railroad problems in the most effective manner. The most superficial of the philosophical problems is that FRA believes, corporately, that the light density line program enacted in the Triple R Act and subsequently modified in the Quad R Act, is a program of the moment, to be heavily administered, to be lightly funded, and to be discriminated against in the allocation of personnel, effort, and interest. I would like to return to that problem in a moment.

The most pervasive, the most serious, the most destructive philosophical problem is the advocacy within FRA of an adversary relationship toward the States. Indeed, the State rail assistance program, the related statutes, the problems we read about in the newspapers on a daily basis, demand a partnership founded on cooperation.

The States themselves recognized early that this was not a situation in which planning could be done in the void. Without a formal apparatus, the State rail planners joined in an ad hoc group to learn and plan and work together. That group persists 3 years later, in a more formalized structure, as the National Council of State Rail Officials.

This instinctive move to work together, felt by the State representatives, who knew best the magnitude of the problems, should have been shared by those working in the Federal agencies, dealing with the same problems. It was not.

Conversely, an adversary relationship has developed, subtle, unstated, but pervasive and influential. The questions devolve around such simplistic and unnecessary delineations of responsibility as whether the funds allocated by Congress to the program are "our" money, that is, belonging to FRA, which has the statutory responsibility for dispensing it, or "their" money, that is, belonging to the States to whom Congress decreed that it be allocated, and by whom it is to be expended.

I am not exaggerating when I suggest that this kind of psychology, this philosophy, permeates all decisionmaking at FRA, so far as we, on the outside, are able to perceive. The States, who should be the clients, or as I believe, the partners, have become the enemy. FRA places every possible roadblock in the way of progress.

Few, if any cooperative gestures are initiated. Seldom, if ever, is the advice of those in the field, in the States, asked, relating to the problems of rail planning, before regulations or programs or procedures are enacted.

As a result, the Federal-State relationships are mired in dissension. That is inefficient, uneconomical, and ineffective, so far as program implementation is concerned.

The States take the view that the railroad situation is such, and the congressional mandate for revitalization is such, that there is no room for any action other than concerted action, and no room for dissension among the public servants who should be ameliorating the critical rail problems of which we are all aware.

However, there has been little or no indication to the States that the FRA is interested in acting cooperatively. An example may be pertinent.

The FRA has decided to use FHWA personnel in each State as the first level of review of rail plans.

One of the documents in use at the training session this week is volume II of the State rail planning manual. I know that only because the Federal highway officials in my State brought that volume along to my office to discuss it. I had to admit to them that I had never seen the manual before.

Senator DURKIN. Let me have that again.

Ms. SHAINE. There is a rail planning manual underway for publication at FRA. We have volume I in the States. Volume II is a draft volume with a yellow cover entitled "Light Density Lines."

Last week the FHWA people from New Hampshire came to see me and had that volume with them. I had never seen it before. So far as I have been able to determine no other State has it. I may have missed some or there may have been some kind of distribution of the document, but I don't know about that.

The planning manual included a cover letter addressed to State railway planners. It suggested we review the draft document and provide comments before the final version was printed.

Was that very good suggestion overruled? What indeed happened to the decision to ask those of us who have been most deeply involved to examine the draft? What is the point in providing a draft document, which may indeed be seriously flawed, to Federal highway officials who will be concerned enough with the many details of this new program, even if they receive the correct information?

Who failed to follow through at FRA? Who decided to give the Federal highway officials a rail planning manual which State rail planners had not ever seen? Who decided to publish a State rail planning manual without asking the experienced State rail planners in the Northeast for comment or aid?

This is a small matter, in and of itself, but it is indicative of the kind of philosophy, the bent of psychology, which appears to pervade FRA. It's difficult to establish cause and effect, or to distinguish chicken from egg, with FRA, but it seems clear that there is a close relationship between the lack of cooperative policy and the lack of philosophical dedication to the rail problem itself.

Those of us in the States are trying to make railroad service better. We see that as the purpose of the rail assistance program, and its only purpose. I suggest that the people at FRA with whom we deal are in no way interested in the problems of railroads, but only in the administrative process.

Few of them have any background in rail, and while that in itself should be no real inhibition to their full participation in the program, one senses absolutely no commitment to the project. Whether railroad service is better or worse, whether railroad tracks are rehabilitated or

not, whether railroad companies, and the industries dependent on them, survive or do not, is no real concern of the FRA State assistance people.

This in itself may have been enough to establish the adversary relationships of which I spoke. It may also relate to the continuing problem of the slow flow of funds to the States from FRA. If FRA has no commitment to bettering the national rail network, then slow acquiescence to State rail needs would be a natural action.

We believe that the responsibility of FRA goes to full cooperation with the States. We believe that correct fiscal procedures, adequate program monitoring, legal drafting of grant agreements, and all of the other areas of responsibility which FRA encompasses can be modeled into a swiftly moving, progressively acting partnership program. We believe that it will probably take radical action in order to accomplish that new turn of events.

But we believe that with congressional encouragement, FRA can find its way to adopting a new attitude toward State agencies. Perhaps all that is necessary to accomplish this is wording in the committee report along the lines I have suggested.

Or perhaps it is necessary to more severely restrict FRA's administrative role, so that whatever the philosophical handicaps from which they suffer, they can in no way inhibit the States' action to preserve and upgrade rail service. Such suggestions follow along the lines of section 2(e) of S. 1793. This proposal, joined with other proposals to restrict FRA's management role, would insure that FRA would be enabled only to certify State rail plans, not to inhibit the programs which take place under them. And the States would gain the necessary flexibility which is required for maximum program efficiency.

I would like to touch lightly on the problem of the light density line program. It has been DOT policy to view this program as a limited duration. Based on that view, we believe a decision was made to allocate little staff and little effort to the program.

The suggestion is always that the States should view support of light density lines as a "phaseout" program, dedicated to abolishing these branches of the system.

However, the status in full recognition of the dependency of their economies on some of the branches, are involved in a serious program of revitalization, through which they hope to keep the branch lines alive.

The States have not been reasonable in their approach, recognizing that some branches are indeed not viable, but that does not mean that they are willing to relinquish all of them. The States need and must have from FRA the continued support for their efforts which come from adequate staffing and administrative effort. It seems unlikely that the light density line program will disappear at the end of its current span. Even if that were so, it would be unwise not to utilize all available funds and effort to assist those lines which can be made self-sufficient. FRA has not moved in that direction. We, in the Northeast, feel that deeply.

Attached to my statement you will find a letter from the director of transportation of Rhode Island, Wendall J. Flanders, who has asked me to transmit to you the views of our sister State in New England.

He believes that the philosophy I have just discussed brought with it severe administrative delays at FRA. He notes that this delay may well cost Rhode Island up to $2 million.

Mr. Flanders from Rhode Island suggests that there should be legislation to force FRA to properly staff the State assistance program office, since they will not do it voluntarily, and further Mr. Flanders argues that there must be legislation to rescue the funds which will be lost to the States in the Northeast region because of the administrative inactivity of FRA. Mr. Flanders is correct.

I believe that it is only because of the persistence of New Hampshire, in some ways which FRA has not found pleasant, that we have not also suffered the loss of some funds to which we are entitled.

For example, the grant agreement for New Hampshire for the current program year left the desk of the FRA liaison person with whom New Hampshire works in mid-March. It did not arrive in New Hampshire until June, 3 full months later.

What happened to it? What kind of administrative delay can cause a grant agreement between a State and a Federal agency, prepared by a competent professional, to take 3 months to get off the desks of administrators at various levels?

There is something wrong with this kind of process.

Senator DURKIN. It must have come by rail.

Ms. SHAINE. But when we complain the State officials tell us only that we are their most vocal critics. Although I find that flattering, I suspect that they tell that to all the States each in its turn.

In short, Senator, FRA is an agency which does not appear to work cooperatively with the States. I could give you many more examples of obstructive behavior, but they would only serve to underline what we view as a pervasive problem.

New Hampshire is eager to work cooperatively with FRA. All States are. Surely there is a way to accomplish that. Surely there is a way to encourage FRA to view the States as part of the same team. Perhaps that way must be legislative.

Now, briefly, I would like to turn my attention to the legislation which is before you. I am sure that you have heard already that S. 1793 does not include in its entitlement provisions any minimum maximum levels. About 22 States fall into the minimum categories. Without a statutory minimum, these States, including New Hampshire, will have no program at all. There must be amending language to provide for minimum entitlement at an agreed-upon percentage.

I would like to note further that S. 1793 does not include a provision for a change in the Interstate Commerce Act which appears in two versions of House legislation dealing with railroad measures. This provision, one form of which—from H.R. 7370—is attached to this testimony, will provide the ICC with the power to order an abandoning railroad to permit passage over its remaining lines to a new carrier which is operating on the abandoned line.

In essence, this would mean that States which have the problem of multiple abandonments, for instance, in a pattern like the branches of a tree, could utilize one short line operator's equipment and crews on a number of lines which are connected only by the unabandoned main stem.

We, in New Hampshire, see this as a potential solution to rail system problems which we may face in the future. Although New Hampshire initiated this proposal, we have been encouraged by the support of many other States who recognize now that they, too, will share this difficulty.

I urge you, Senator, to be sure that this provision appears in the final version of the Senate bill.

Thank you for giving me this time.

[The attachment referred to follows:]

ATTACHMENT A

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
DEPARTMENT OF TRANSPORTATION,
Providence, R.I., July 14, 1977.

MRS. FRANCES SHAINE,
New Hampshire Transportation,
Concord, N.H.

DEAR FRANCES: As you have been selected to testify before Senator Durkin's oversight hearings on July 21, 1977, I'd like to share a few thoughts for inclusion in your testimony.

The bulk of the problem that developed for us in Rhode Island are as a result of delays in processing of applications, grant contract amendments, reviewing technical studies (such as bridge inspection reports) and letter's of credit.

These delays result in the loss of valuable time during the construction seasons which then pushes second phase projects out of the program period.

This will result in the loss of almost $1,000,000 in Federal Funds to Rhode Island.

These delays also cause funded projects to be postponed to a period after April 1, 1978. If FRA closed the books on the title IV program on March 30, 1978, Rhode Island could stand to lose an additional $1,000,000. All because of proper staffing and technical personnel. The treatment of this program (and title VIII as well) as temporary, precludes the efficient use of authorized funds for the purposes Congress intended.

Corrective action should take the form of legislation to force FRA to properly staff the program office, also to set a definite course of action as to the use of granted title IV funds for construction which have not been spent, to be spent after the end of the program in March 1978. This would allow States to undertake those projects which FRA felt were reasonable and justified, and therefore granted the funds, but because of administrative problems were not accomplished within the program period.

The FRA interpretations of section 403 of the 3R–Act of 1973 as amended have also created difficulty for the State in accomplishing it's goals for the program. They have steadfastly maintained a strict opposition to rehabilitation programs to bring track to class II on the basis that it is more effective and efficient to bring track to class II rather than class I based on the reduced cost of annual maintenance, reduced L. & D. and more efficient operations. The flexibility of the States in spending these funds is important to all the States.

Lastly and most importantly is that S. 1793 proposes to amend the entitlement provisions of the title IV and VIII programs. The language as introduced provides for no minimum or maximum entitlement.

According to FRA calculating on Oct. 18, 1976 there were 13 States receiving the 1 percent minimum, entitlement in the title VIII program. This, however, may be changed substantially by the system map filing by the Nation's railroads.

But this gives at least some indication that about 22 States fall into the minimum categories. Without such assurances of funding some small States would have no program at all.

I request that you express Rhode Island's objection to any revision to the entitlement provisions that would reduce it's entitlement as well as the entitlements of the 21 other minimum States.

Please include, these comments in your testimony before Senator Durkin's hearings.

Thank you.

Sincerely,

WENDALL J. FLANDERS,
Director of Transportation.

ATTACHMENT B

SEC. 10. Section 1a(4) of the Interstate Commerce Act (49 U.S.C. 1a(4)) is amended by adding at the end thereof the following new sentences: "The terms and conditions referred to in subdivision (b) of this paragraph may include authorization for another common carrier by railroad subject to this part to operate rail service over all or any portion of the lines subject to abandonment or discontinuance and over such additional lines of the applicant's railroad, as determined by the Commission to be necessary to meet the present or future public convenience and necessity. In making such determination, the Commission shall consider the views of any State directly affected by such abandonment or discontinuance and shall fix just and reasonable compensation, in accordance with section 3(5) of this part, for the use of the applicant's rail lines.".

Senator DURKIN. Thank you. Thank you for an excellent statement, and thank you for all of the hard work and help you have been to my office and my staff, and we appreciate it very much.

The minimum funding, I am vitally interested in minimum funding. We have been trying to put minimum funding in public works programs and various and sundry programs. That is only 44 votes. We have 22 States. We have to come up with quite a bit of work so we can get to 51 votes, anyway.

Mr. ELKINS. Mr. Rossi will be our next witness, who is from New York State.

Mr. ROSSI. Knowing I was going to follow Frances, and I would agree with everything she said, I decided to give you explicit case instances of FRA administration of the program which speak for themselves.

Senator DURKIN. Do us a favor, to distinguish, if you can, since Sullivan and others took over down there. And I would like your impression, is there any change since they took over, or is it more of the same?

Mr. ROSSI. On the first exhibit, which deals with two connections, the State proposed to build between two subsidized lines, each would have been one-tenth of a mile long, and the total cost would have been $450,000.

Mr. ELKINS. To refer to your earlier question about the change in Administrators, we feel it is not the individual administrators that are a problem. We think it is the philosophy of the program. We are concerned that the philosophy is a phaseout program, as opposed to the question of rehabilitation and making the system better. We are confident as we have more discourse with the new Administrator that this will be open to change.

Mr. Rossi will point out the problems.

Mr. ROSSI. I wish the new Administrator were here to hear this. What we have been proposing to do since November 30, 1976, is spend $450,000 to extend two lines. The unions have concurred in this and signed letters with us where they are consolidating two railroad crews. FRA has still not approved and let us go ahead with this project. Instead, if we had elected to go with the accelerated maintenance with class 1, we would have had no problem spending $450,000. We have been trying to spend less money, avoid operating subsidy thereafter, and we cannot get the go-ahead. On a 30-mile branch line of New York State which has 2,000 carloads and three major industries, of Baker Beech-Nut Baby Foods, we wanted to reclassify that line to class 2. FRA said we should revise it to class 3. We revised our application.

They questioned the analysis we put together at their suggestion. They finally accepted the program, but we haven't gotten a grant agreement from them. We have not gone ahead with the revision of this line, which is a $108 million project.

Senator DURKIN. Does this have anything to do with the fiasco at Rensselaer, the trackage that was torn up?

Mr. ROSSI. That's a different fiasco.

Senator DURKIN. Whose responsibility is that?

Mr. ROSSI. Amtrak under Roger Louis authorized Penn Central to remove the track. The operation they had at that time was to pay the least cost, which would have been $40,000 a year. I understand the staff wrote memos advising them to do that. The board decided not to, and now we are faced with the money to replace the track.

I want to point out, by the way, in both of these instances not only did we lose 100 percent capital money, but the program is larger and we are wasting operating assistance funds while these lines which are not connected and not rehabilitated cost more to run.

The Koutmor train line brings up another issue. All of the attention so far has been directed at FRA. We would be remiss not to focus on ConRail a bit. Despite the agreements, we have had agreements from FRA to proceed. We have had two track connections approved on ConRail property which would connect subsidized segments to ConRail tracks.

These have been ConRail since February 8, 1977, and we cannot get ConRail lawyers to proceed even where FRA has subsidized the money. We continue to sustain the operating loss.

Senator DURKIN. Why?

Mr. ROSSI. We have good relations with ConRail. Nevertheless, the light density line program is not the one where the relationship has been good. We have a further exhibit——

Senator DURKIN. Is there anyone from ConRail here at the present time? Could you sit down and work this out with him today?

VOICE. I would be glad to discuss it with him.

Senator DURKIN. Could you try to move it along?

VOICE. Surely.

Mr. ROSSI. In addition to the contract execution process on the capital improvements, New York is somewhat uniquely in the position to do very complete audits of the ConRail operations in the field, and what concerns me here is we are the only State that can really do this, and the problems we have uncovered seem to indicate that there is really a serious lack of management supervision of the subsidized lines, and we are not getting what we pay for in the management field, or rehabilitation.

In the first subsidy year, ConRail did no accelerated maintenance. All of that money had to be rolled over to the second year. It was a lack of being able to get the crews on the job. The money was available from FRA. We have instance after instance of bad field reporting systems. Even the audit that is in exhibit 1.5. We have problems of ConRail carload records not matching the shipper waybill. Every time we have presented the shipper waybill to ConRail, they have corrected the accounting and given New York the credit for the revenue.

Concern about Pennsylvania and Ohio that have not been able to go out and audit these lines. I suspect they are paying more in subsidy costs than are there.

Senator DURKIN. Could you just touch on this, otherwise you will not get to the meeting with the ConRail official today.

Mr. ROSSI. That is probably enough. The exhibits speak for themselves, and we tried to write them so they will stand in the record.

I was asked to touch on two other subjects.

New York is the only other agency that maintains a grant-in-aid program for railroad freight work. This year we have obligated $100 million to capital construction work. I have an exhibit on five of those projects, and the benefits we got back. In one instance, we got paid for the investment. Four of our projects, including the high-speed rail investment program, take this much paper. Our high-speed program is under way, will be completed in 3 years, is this much paper.

Senator DURKIN. What speeds are the trains achieving?

Mr. ROSSI. Eleven percent on-time performance now. Sixty-miles-an-hour is the maximum speed. The on-time performance is terrible. We have the worst on-time performance in the United States. The track work program is underway. It in itself is delayed. We are doing so much track work that Amtrak cannot operate the trains around our track work. Amtrak is cooperating in this program to the extent of allocating the Turbotrain equipment to New York. They have built a turbo operation in Albany and they have agreed to maintain the track at 110 miles per hour after our work is completed.

Senator DURKIN. It seems inconsistent to have their high-speed train on a railbed that will not allow them to go over 60-miles-an-hour.

Mr. ROSSI. One of the problems in the East is that Amtrak has been reequipping their old transits step by step. Because of clearance limitations in the stations in New York, Penn Station, and Washington, they have been allocating all of the new equipment to the trains outside the Northeast. This is a rare instance. There is another in Michigan where Amtrak has been putting new equipment on. This is the only equipment that meets the clearance standards of the computer terminal.

Senator DURKIN. Is Amtrak running from Albany to Buffalo?

Mr. ROSSI. On-time performance is bad there, also. The market is good. We also have a train to Montreal.

Senator DURKIN. It that turbo?

Mr. ROSSI. Yes.

Senator DURKIN. Is the on-time performance better in the Canadian side?

Mr. ROSSI. On the Delaware & Hudson we have the fastest schedules from Delaware to Montreal that were ever printed. The Delaware & Hudson has shown the ability to operate a refurbished train on a refurbished track once the work is completed. We have invested about $4 million on that line, and Amtrak has provided the equipment. I think I would concur with Frances. There is a lack of inclination to expedite the work, to be permanently associated with the work.

I think the commissioner of transportation in most States knows personally about every project and what it means, and it is institutionally hard to do that in Washington.

My recommendations are that this program be made a block-grant program to the States, and that FRA limits its involvement to approval of a State rail plan and program of projects each year, and then certifying in the postaudit that work that was completed.

I have to disagree with Rhode Island that they need more staff. They need less staff.

Concerning ConRail, I think ConRail should give the States remedy or penalty against ConRail where ConRail has not managed these lines efficiently. We should have legislation directing mandatory——

Senator DURKIN. Overall you would give ConRail good grades?

Mr. ROSSI. They have done well on their main-line work, but not on their NYC lines. Congress should prevent ConRail from undertaking any further study of lines for possible abandonment pending proper completion of the ConRail present program.

There is one third area. Changing hats, I have been asked to speak for the New England States, New York, and Pennsylvania, on the Delaware & Hudson situation.

There is an exhibit on that.

Senator DURKIN. Will you make sure the stenographer gets those, or it will all be in vain.

Mr. ROSSI. We feel strongly in the mid-Atlantic States that there is a serious problem arising with lack of competition in the port of New York area, and its implication on New England, if the Delaware & Hudson is not allowed to expand and come up with a long-term profitable solution to its problems. The ICC has been helping us, and the USRA has pledged their assistance. We think there needs to be legislation to reimburse the Delaware & Hudson for the losses they sustained from the destinations they accepted from the USRA.

Senator DURKIN. Thank you.

[The statement and attachments referred to follow:]

STATEMENT OF LOUIS ROSSI, RAIL GROUP DIRECTOR, NEW YORK STATE DEPARTMENT OF TRANSPORTATION

SUMMARY OF NEW YORK STATE'S RECOMMENDATIONS CONCERNING THE TITLE IV PROGRAM

Recommendations Concerning FRA: (1) Legislation directing FRA to distribute Title IV and Title VIII monies to the states in block grant form and to statutorily limit FRA's involvement to approval of a state rail plan and a program of projects at the start-up of the assistance year, and a post-audit to ensure compliance.

Recommendations Concerning Conrail:

(1) Congress should give the states a remedy or penalty power against Conrail to cover instances where Conrail has not efficiently managed or properly operated rail services under contract with the states.

(2) Legislation directing the mandatory conveyance of all light density branch lines deemed profitable according to RSPO standards.

(3) Congress should prevent Conrail from undertaking any further study of lines for possible abandonment pending proper completion of Conrail's present program.

SUMMARY OF NEW YORK STATE'S VIEWS ON TITLE IV PROBLEMS

New York State feels that the inadequacies shown by FRA in this Title IV Program are serving to cripple the economic development of both the State's rail system and the State's localities while at the same time creating an extreme waste of government funds (such as experience in the Wallington Connection example, Exhibit 1.1).

In Conrail's case, it is felt that lack of management and supervision is leading towards an artificial incentive to create shortlines which will ultimately lead to loses by railroad labor unions.

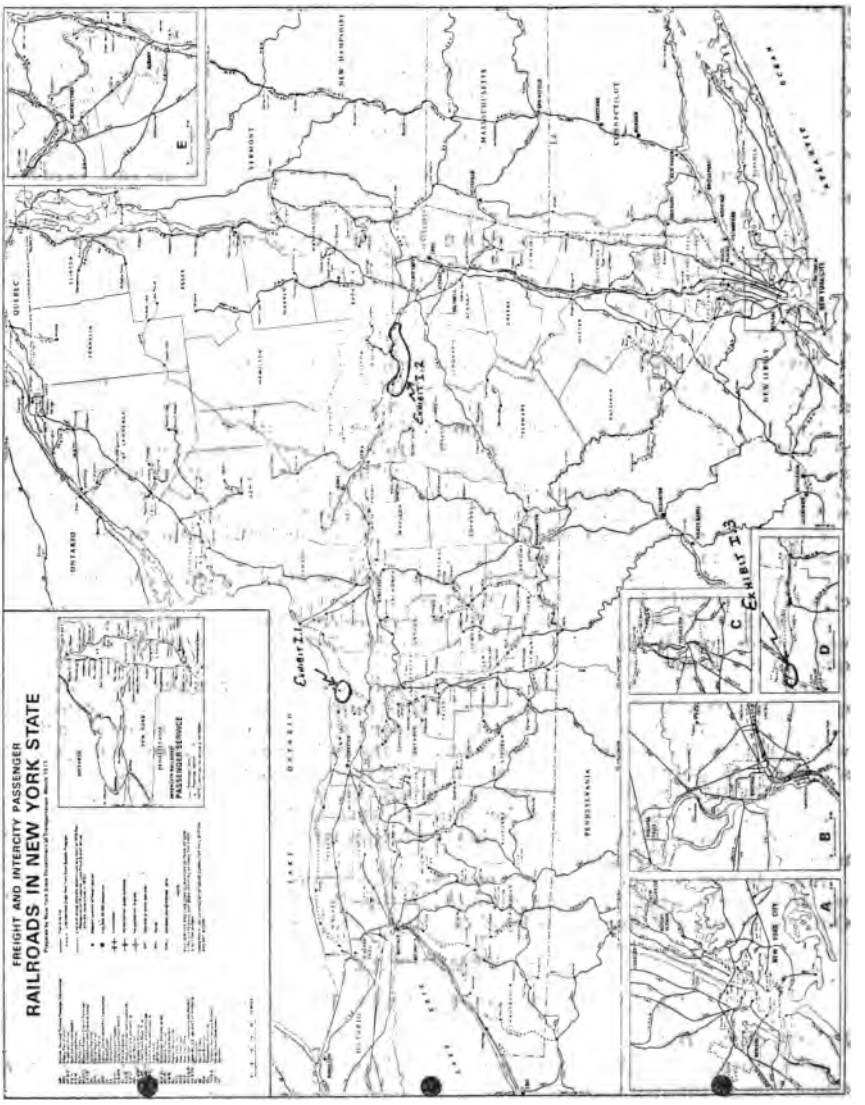

EXHIBIT 1.1

WALLINGTON CONNECTION

Projection description

Construction of two connections (approx. .1 mile long each) in the southeast and southwest quadrants of the intersection between the Ontario Secondary and Sodus Bay Secondary Tracks. The estimated cost of the two connections is $450,000.

Economic benefits

Avoid the necessity to immediately invest $524,000 for accelerated maintenance on these 2 segments above to eliminate safety waivers (FRA Safety Board has established a December, 1977 deadline)

Retirement of 9.4 miles of track from Windsor Beach to Webster on the west ($23,265 savings in lease cost annually)

Retirement of 7.8 miles of track from Oswego to Hannibal on the east ($19,305 savings in lease cost annually)

Additional annual operating cost savings of $30,000.

Avoidance of $2.2 million investment by Army Corps of Engineers to replace railroad bridge at the mouth of Irondequoit Bay

B/C ratio=7.61 or conservatively (w/o consideration of savings to Army Corps)=2.77

Chronology

November 30, 1976—Application submitted to FRA (39 pages).

February 11, 1977—FRA staff advises project will be approved on condition that agreements between Conrail and labor are readied before construction begins.

March 7, 1977—FRA sends their approval with grant amendment condition with respect to labor agreements must be met before grant amendment can be executed rather than before construction award as earlier indicated. Since other projects for accelerated maintenance were included in this amendment it had to be re-written and sent back to FRA w/o Wallington project.

Cover letter requested additional economic analysis be done to justify SE quadrant (analysis to be placed in file).

Cover letter requested further documentation be placed in files concerning the criteria for certain design aspects of project.

April 11, 1977—State revises grant amendment to allow its signing before labor agreements are in place and avoid complicating every future grant action. Requests FRA to concur.

May 16, 1977—State submits AAP including request for waiver of FRA required language in favor of that used in its $700 million highway program.

May 19, 1977—State submits Wallington contract for approval. Requests action within 30 days to enable any changes necessary to be included before bid opening scheduled for July 14, 1977. Contract in conformance with AAP.

June 20, 1977—FRA approves revised grant amendment.

July 14, 1977—Bid openings for project construction held by State.

July 22, 1977—FRA indicates they cannot approve contract without specific nondiscrimination language.

State is now attempting to get contractor to agree to changes. If he does not, we must readvertise. The project could not then be completed until next year and Ontario Secondary line could be closed down due to waiver conditions.

EXHIBIT 1.2

SO. AMSTERDAM—SO. FT. PLAIN REHABILITATION

Project description

Rehabilitation of the West Shore Secondary Track to FRA Class III safety standards. Estimated cost for this 29.5 mile line is $1.8 million.

Economic benefits

Reduce operating subsidy costs to a level where a long term negotiated solution for continuation of rail service can be achieved thereby avoiding possible abandonment and loss of over 1700 jobs.

Project pays for itself in 14 years.

Chronology

July 1, 1976—State submits application for Class II rehab. at $2.2 million cost (56 pages).

August 24, 1976—FRA informs State verbally that cost estimate is too high, should consider Class III.

December 9, 1976—FRA informs Conference of States they need guidelines for evaluation of rehab. projects. Suggests joint NCSRO/FRA committee.

February 2, 1977—State submits draft guidelines to NCSRO committee.

February 4, 1977—State submits revised application to FRA for Class III rehab. at a cost of $1.8 million (25 pages).

April 12, 1977—FRA questions analysis justifying Class III (which they had originally suggested) but approves project conditioned on State acceptance of limitation to future Federal participation in subsidy costs to that of 12 hour one day round trip.

May 2, 1977—State accepts limitation, requests grant amendment.

June 8, 1977—State sends contract to Conrail.

July 29, 1977—Still no grant amendment from FRA. Conrail hasn't executed agreement (see Exhibit 1.3) for discussion of problems with Conrail's contract execution process).

EXHIBIT 1.3

Conrail Contracting

Projects

Batavia—$270,000 track connection designed by Conrail.

Clarence—$22,500 team track designed by Conrail.

Chronology

February 8, 1977—State sends agreement to Conrail for execution.

April 14, 1977—Letter from Conrail w/comments. Comments are based on misconception that Conrail doesn't own property.

April 27, 1977—State responds in writing to Conrail's comments.

May 6, 1977—Conrail verbally informs State of revised cost estimate. Conrail instructed to send final plans and estimate, revise agreements and execute.

May 12, 1977—Conrail verbally indicates need for more changes.

June 1, 1977—Conrail writes to request changes in cost.

June 7, 1977—Conrail issues resolved verbally.

June 9, 1977—State responds affirmatively ala verbal response 1 month earlier.

June 17, 1977—Conrail indicates more changes to agreement will be necessary.

June 21, 1977—Conrail transmits revised work schedules per comments from Chief Engineer.

June 23, 1977—State responds to Conrail in writing on work schedules.

July 1, 1977—Conrail transmits completely retyped agreement.

July 7, 1977—State calls Conrail to indicate serious probs w/contract. Conrail indicates they must change it too.

July 13, 1977—State receives verbal assurance contracts will be finalized in a form acceptable to the State and executed within a week.

July 29, 1977—Conrail still has not executed agreement. It is now almost six months since we began.

EXHIBIT 1.4

Supervision and Management

While some operations have been managed in a very efficient manner, there have been several situations where more attentive and interested supervision could produce economies and more efficient operations.

Examples:

1. Operation of the West Shore Branch, South Amsterdam to Fort Plain, is plagued by excessive terminal delays at Selkirk. Crew hours on the line and deadheading time has been excessive on numerous occasions. The letter of June 17, 1976 from the Department of ConRail attached to Exhibit 1.6 outlines some examples of excessive crew operations. These problems have been taken up a number of times with local operating supervision and with the Light Density Line office in Philadelphia, but still persist.

2. Failure to inspect cars at a terminal prior to delivery to shippers for loading results in rejection of many cars as unfit for loading. The result is additional costs to transport fit cars to the shippers and to return the rejected cars. This continues to occur despite our appeals to operating supervisors to institute adequate inspection procedures.

OTHER ADMINISTRATIVE AND OPERATING MATTERS

Lack of Effective Communication between Light Density Line Office in Philadelphia and Regions:

Example: The operating agreement between ConRail and the State for the second year of subsidy operations changed the frequency of service on several lines from that performed in the first year. In a letter dated March 7, 1977 the Department requested the Light Density Line office to notify operating officials in charge of such lines of the changes. Follow-up by the Department with field supervision in mid-April indicated no instructions were issued concerning the service changes.

TRACK MAINTENANCE

There was no formal maintenance program in the first subsidy year. The lack of such a program allowed further deterioration of the lines, resulting in irregular service due to frequent derailments. A program was furnished by ConRail for the second year. We have not received progress reports on the status of the program to date.

EXHIBIT 1.5

CONRAIL ACCOUNTING

The reporting and accounting procedures do not provide accurate cost and revenue reports on light density line operations. The lack of reliable data seriously hampers the State's ability to evaluate the results of the operations and to make appropriate changes in service that may be warranted.

REPORTING SYSTEM

ConRail's reporting system results in reports replete with errors and omissions. Our observations are confirmed by the audit made by RSPO and the two audits made by the Federal Highway Administration (Audit Report Nos. 77–FRA–2 and 77–FRA–5). These audits outline the inadequacy of ConRail's field reporting system, and the lack of an effective plan to correct errors concerning unmatched and potential car revenue and cost movements. These audits emphasize the need to improve procedures and to audit field reports in a more comprehensive manner.

Incomplete reports from the field are common: Hours of operation not shown. Carloads handled not shown. Non-LDL work performed not identified.

Field Procedures Manual incomplete and instructions not clear.

REVENUE ACCOUNTING

The 1977–78 operating cost and revenue estimates were projected from the May to July data furnished by ConRail. This report contained numerous errors, and the accuracy of revenue data and off-branch costs was questionable due to the large number of cars still in the unmatched or potential categories even though the report was furnished in early January, 1977, 6 months after the car movements had taken place.

The only reliable check we have had on carload reports is comparison with shipper records. In those cases where we have data from most of the shippers on a subsidy line, we have found ConRail's records often showed less carloads than the shippers reported. ConRail has corrected its records where we were able to show them sufficient evidence their reports were erroneous. What concerns us is that these were not a few isolated cases, but numerous instances where the carload data was erroneous.

The RSPO subsidy standards require full revenue from transit-type shipments to be attributed to the light density lines. This is not being done and the result is inaccurate reports which in most cases show a greater loss than actual.

Two examples of inaccurate reporting and assignment of charges will illustrate the effect on the operating results:

1. On Line 1240 (Batavia to LeRoy) the Light Density Line Accounting Office was charging the full time of the crew, usually 12 hours a day, to the light density line even though the CR–8 form indicated the train crew was doing non-light density line work. This line was showing large operating losses when in fact it will be a profitable line when the correct train crew hours are charged.

2. On Line 249 (Mayville to Corry), the line was being erroneously charged with a captive locomotive. This locomotive is actually assigned to Corry, PA five days per week, basically for non-light density line work. Correction of this error will substantially reduce the operating losses previously reported on this line.

Errors such as these could be prevented by proper audits of the field reports, and adequate instructions to the field personnel directly involved in the subsidy operations.

CORRECTION ACTIONS TAKEN BY THE STATE

1. Letter dated June 17, 1976 to Manager, Light Density Lines (exhibit 1.6) outlines in considerable detail the necessity for an improved Field Procedures Manual and supervising review of the reports.

2. The matter of revenues from transit shipments has been the subject of several letters and meetings dating back to June 17, 1976, and the matter is not yet resolved. An accurate final accounting for the first year's operations can not be rendered until ConRail develops a method to properly assign transit revenues.

EXHIBIT 1.6

NEW YORK STATE
DEPARTMENT OF TRANSPORTATION,
Albany, N.Y., June 17, 1976.

MR. JAMES BLAZE,
Manager, LDL Lines, Consolidated Rail Corp.
Philadelphia, Pa.

DEAR MR. BLAZE: We are in the process of making field checks on each subsidy line to examine the details of each operation and the reports being prepared by your forces. We have completed a check on six lines so far in which we examined the reports covering up to a month's operation in some cases. We find that there is considerable confusion and misunderstanding among your station and operating personnel on the procedures and report contents. Certain instructions in your Field Procedures Manual are being interpreted in a different manner at some of the sites we checked and certain items are being reported incorrectly. We also find some of the reporting to be careless; for example, empty cars are shown on form CR–8 as being placed for loading, but the load out is not reported. Based on the checks we have made, I feel immediate action should be taken to improve the procedures and instructions to obtain an accurate and consistent reporting of costs and revenues.

I am listing below general comments and observations based on our field checks and specific comments on the lines checked to date.

GENERAL COMMENTS

1. The Field Procedures Manual does not provide for reporting of miscellaneous revenues such as demurrage and detention charges, secondary switching charges, weighing charges, and revenue from assigned cars. These revenues should accrue to the subsidy lines and it is not apparent whether records of such revenues are being accumulated.

2. The procedures do not seem to account for handling of In-Transit billings, stop-off cars, and cars billed collect to be weighed enroute. It is our impression from discussions with personnel in your Station Department that the present system is not geared to properly assign revenues from such traffic to the LDL accounts.

3. As I indicated above, the reporting is not consistent from line to line and certain items are being reported incorrectly. For example, deadhead hours are not to be included under "Avoidable Hours." We find deadhead hours are being included in "Avoidable Hours" on some lines which results in a duplication.

Reporting of Deadhead Time and Initial Terminal Delay on form CR–8 is not consistent. Assume a four man crew with one hour deadhead time. Some reports show one hour and some show four hours.

4. It is not clear why some operations are incurring terminal delay and just what constitutes terminal delay. We would appreciate an explanation of this type of charge as the reports indicate terminal delays every day on some operations and some appear to be excessive.

5. It is not apparent whether the arbitrary charges, deadhead time and other claims entered by the crews are being checked to determine if they are allowable under the applicable labor agreements. In the event charges are later denied, is there a procedure for notifying the LDL accounting office to make corrections?

SPECIFIC COMMENTS

Line No. 1020—Van Etten Junction to Odessa.—The CR–8 forms we checked reflected that one CR–8 form covered the entire month of April. This unsatisfactory condition has been since corrected, however no adjustment was made to correct April's reporting.

This line is served by the local which hauls coal and other traffic to Ithaca and Ludlowville. Due to the heavy tonnage, this train operates with two or three locomotives. However only one locomotive is required for the light traffic on the subsidy line and I assume we will only be charged for one unit.

On April 29, 1976, the agency records show EL71553, a load of feed, being placed at Agway in Odessa. Form CR–8 does not show this car being placed or pulled.

Line No. 1250—Salamanca to Cattaraugus.—This line is served by a yard switcher crew which is a six day job. Apparently this crew has no yard work on Saturdays and is used to serve the subsidy line. This is resulting in a very excessive crew cost for this operation. The actual operation on the subsidy line on April 17, 1976, required three and one half hours; if this had been performed on a day when the crew had non-LDL work, the total crew chargeable to LDL would normally be 17.5 hours. However, some of the regular crew members can be expected to mark-off on Saturday and it becomes necessary to deadhead replacements with the result that this line was charged with considerable deadhead time plus eight hours crew time for three and one half hours of work, a total of about 76 hours.

We would appreciate your review of this operation to determine if the line can be served on a weekday in conjunction with the regular yard work of this crew. The operating agreement provides service twice a week, however, only one trip a week has been required due to the light traffic volume. We find that in most locations checked your operating supervisors are using good judgment in adjusting frequency of service.

Line No. 233/234/238—Bellona to Seneca Castle and Canandaigua Track at Stanley.—The CR–8 forms we checked for a two week period were generally okay.

We did note two empty hopper cars (SAL7402 and SCL830360) were pulled on May 10, 1976, and the form for May 4, 1976, did not show these cars as being placed. Perhaps the cars were placed in the previous week, but it normally would not take two weeks to unload a car. The records should be checked to assure waybills for these cars were submitted.

Line No. 1003—Owego to Mead.—We made a detailed check of the records covering this operation for the period of April 19, 1976, to May 1, 1976, inclusive. The method of operation was resulting in excessive costs for lodging, meals and taxi. The job was operated on a six day basis with three overnight tie-ups at Freeville which resulted in short work days of four to six hours two or three times a week.

On May 20, 1976, we met with Mr. E. G. Clancy, Assistant Superintendent and Mr. M. T. Sipple, Trainmaster, to discuss this operation. Mr. Clancy has instituted changes in this operation which will decrease the costs substantially with no adverse effect on service and we appreciate his interest and cooperation in improving this operation.

We also brought to Mr. Clancy's attention examples where cars are reported being placed on the line, but not reported out. He was going to check on this.

The reports also indicate the following charges which Mr. Clancy will investigate:

1. Terminal delays up to three hours and fifty-five minutes on the trips originating at Owego.

2. Arbitrary charges for coupling hoses. We believe this is incorrect.

3. Pilot service for unqualified Engineer for six days in one week. How long does it take to qualify an Engineer?

As I noted under General Comments, the train crews are charging various arbitraries which may or may not be allowable. Checking on the validity of such charges must be a part of the reporting process and a procedure must be instituted to see that the LDL accounting office is advised of disallowed claims.

Line No. 237—Kingston to Stamford.—There were numerous errors in the reporting of deadhead and avoidable time on the CR–8 form, and deadhead time was being included in avoidable time. We have discussed this with the Trainmaster at Kingston and it is our understanding that future forms will reflect correct handling of the deadhead and avoidable time. The CR–8 forms submitted for the first two and one half months of operation should be corrected to eliminate the duplication of charges due to the incorrect reporting of deadhead time.

As you know, it is our intention to discontinue service on this line at the end of September, and we anticipate sending you official notice on this in the next week or two. In the meantime, we believe that steps can be taken to reduce the cost of this operation and we are working with the local operating people to improve this operation.

Line No. 81—South Amsterdam to South Fort Plain.—The CR–8 forms for this line are replete with errors and entries that are contrary to the instructions in the field Procedures Manual. We discussed corrections we feel should be made with the Trainmaster and he indicated that Mr. Caruso's office in Philadelphia advised him to not change the reporting methods. Following are examples we feel are in error:

1. CR–8 for May 1, 1976, attached. Deadhead time should not be shown. The crew is on duty at 8 am and such time is properly shown under on-duty time entry. This error is repeated each day. The avoidable time should be five hours and fifty-five minutes rather than the six hours and thirty minutes shown. The time from 1:55 pm to 4:00 pm is on a non-LDL line.

2. CR–8 for May 3, 1976, attached. Off-duty time should be 10:30 pm. The time deadheading to home terminal is not on-duty time and should not be included in duty time. Again the avoidable time should be eight hours rather than twelve hours. This is typical of the way deadhead time is reported and avoidable time is calculated on this line.

3. On the westbound trip, the LDL line is being charged with twelve hours every day. The time spent between Selkirk and MP 165 is not chargeable to the LDL line. Conversely the time spent between MP 165 and Selkirk on the return trip is not chargeable to the LDL line.

4. We also note that deadhead time is reported as two and one half hours on some trips. We know of no reason for such a large variance for the normal one and one half to one and three quarters hour time.

5. You will also note that the deadhead time on the return from Canajoharie is consistently one hour and forty-five minutes except on Fridays when it is always one hour and twenty-nine minutes which means the crew has proper rest for the next morning assignment as this train is marked earlier Saturdays. If it is possible to deadhead in one hour and twenty-nine minutes on Friday, there is no reason the State should pay for one hour and forty-five minutes on other days and we request that all deadhead time on the return from Canajoharie be revised to one hour and twenty-nine minutes. Since this train also operates on a non-LDL line all of the deadhead time is not chargeable to the LDL line.

6. On June 9, 1976, there was an extra taxi charge of $43.50. This was necessary because the crew outlawed outside the LDL line. This taxi cost is thus not chargeable to the LDL line.

7. The form CR–8 for June 9, 1976, reports no cars inbound or outbound. A physical check by this office showed ten outbound cars taken off the LDL line by this train.

8. We also note that the crew operates twelve hours on each westbound trip. It is doubtful that the workload would be so consistent as to require the same number of hours on every westbound trip. Supervision should be checking this operation on a closer basis. We feel there are a number of ways the operational costs can be decreased substantially and we will take this up with the Superintendent's office.

We intend to continue checks of the operation of each subsidy line as part of our monitoring and auditing responsibilities under the Federal Grant Agreement. In the meantime it is apparent from the checks we have completed that in some instances the present reporting procedures are being misunderstood and are not providing an accurate record of the costs and revenues attributable to the LDL line. It will be to our mutual benefit to resolve these problems at an early date.

We also feel that operational changes can be made that will reduce costs on certain subsidy lines, as demonstrated by the changes made on the Owego-Mead line. It is imperative that the Operation Department supervisors study these lines and provide the most economical service.

Per Bob Colucci's telephone conversation with Rick Huffman today, we understand you and Rick will be able to come to Albany on June 25, 1976, to discuss these matters.

Sincerely,

JOHN J. CONNOR,
Principal Railroad Engineer,
Transportation Service Division.

EXHIBIT 2.1

SUBJECT AREA: TITLE V PROGRAM AND NORTHEAST CORRIDOR

NEW YORK STATE RAIL PROGRAM

New York States Rail Preservation Program is relatively new. In 1974 the Department was appropriated $30 million in funds and an appropriation of $250 million in bond funds for capital improvements followed in July of 1975. This $280 million in state funds generated a $560 million program. In this last year alone we have obligated in excess of $100 million in state funds. Typical projects are as follows:

High Speed Rail—$34 Million

Project justification and contract with Conrail for $34 million dollars. This program in conjunction with commuter program will reduce travel time between New York City and Albany from present 3 hours to less than 2 hours. Amtrak also has agreed in principle to pay for maintenance up to 110 MPH which is over and above Conrail responsibility. Project will be completed in three years.

Phoenix Branch—$4.5 Million

Track rehabilitation and bridge replacement. Project allows a 100 ton car to use the line. Estimated increase indirect employment of 1230 to the area.

Radisson Yard—State Cost $1.7 Million, Shipper, Railroad and other $1.3 Million

Contract has been forwarded to Conrail. Agreement has been reached in principle; state funds 1.7 million for construction of a support yard and the remaining 1.3 million will be supported by a shipper guarantee of 10,000 carloads per year and railroad refund of $15 per car. If support yard is successful, State can recoup its investment.

Interlocking Improvements—$5.3 Million

Rehabilitate 33 interlockings and 163 turnouts on Conrail main line to improve passenger and freight service.

Delaware & Hudson Projects—Summary

Track	[1] $16, 087, 008
Signal	1, 100, 000
Locomotives (Rehab.) [2]	5, 400, 000

[1] $218,414 (ties) (36.83 miles of rail).
[2] 42 locomotives.

In projects with the Delaware & Hudson the state takes title to materials and also requires the railroad to maintain a level of maintenance in addition to state investment. Locomotives are assured of a 20 year life with payback provision if the 20 year requirement is not met.

SUBJECT AREA: THE DELAWARE AND HUDSON RAILWAY COMPANY

The Final System Plan, formulated and published by the United States Railway Association on July 26, 1975, established the framework for the creation of the Consolidated Rail Corporation (Conrail) the new carrier created to be the successor to the several bankrupt railroads in the Northeast and Midwest regions. The plan was delivered to the Congress on July 26, 1975 and according to the Regional Rail Reorganization Act of 1973, the Plan would become effective after 60 days of continuous session of Congress unless rejected by the Congress within that time. The mandated period of time passed without Congressional rejection and the Plan became effective on November 9, 1975.

One of the recommendations of the Final System Plan was that the Chessie System be granted the opportunity to acquire certain properties of Erie Lackawanna, one of the bankrupt carriers, and provide service to the Region and in particular, provide service to the densely developed and industrialized Northeast New Jersey, New York Metropolitan area which has as its focus the New York-New Jersey Port District.

Chessie System responded to the designations in the Final System Plan in a positive and cooperative manner but could not satisfy the several conditions mandated as a condition for satisfying the requirements of Title V within the time allotted to them.

Following the collapse of the Chessie, attempts to provide a competitive service to Conrail, a number of alternatives were developed and considered. The one that emerged as an imperfect, but achievable solution was the designation, by the United States Railway Association, of certain operating rights and certain restricted traffic access to the Delaware & Hudson Railway Company (D&H), a profitable railroad operating, at that time, in and between the states of New York and Pennsylvania, connecting with the independent (non-Conrail) New England carriers at Mechanicville, New York and with the Canadian Carriers at Rouses Point, New York and Delson, Province of Quebec.

The designations requested by the State of New Jersey and the Port Authority of New York and New Jersey were designed and intended to provide a diversified and adequate base of traffic to support the operations of the Delaware and Hudson.

Seven designations were requested from the United States Railway Association (USRA) for the Delaware and Hudson and dealt with:

1. Overhead trackage rights over the Lehigh Valley Railroad between Allentown, Pennsylvania and Newark, (Oak Island Yard), New Jersey.
2. Access by Delaware and Hudson to the Northern New Jersey traffic base as was planned for the Chessie System under the preferred industry structure proposal set forth in the Final System Plan.
3. Trackage rights over the Lehigh Valley line from Oak Island Yard to Greenville and access to the car floats at Greenville.
4. Interchange rights at Bound Brook, New Jersey, for traffic to and from former Central Railroad Company of New Jersey, including intermodal traffic to and from the Somerville (New Jersey) ramp.
5. Interchange rights at Oak Island Junction for traffic to and from the former Central Railroad Company of New Jersey.
6. Trackage rights from Newark (Oak Island Yard), New Jersey to a connection with tracks owned or leased by the Port Authority of New York and New Jersey at the northern periphery of its property at Port Newark, New Jersey.
7. Acquisition of Erie Lackawanna Railway's interest in Trailer Train Company as previously offered Chessie System.

Of the seven designations requested for D&H, all but one were denied by USRA. The Delaware and Hudson accepted the designation made available to them and intermodal service to and from Oak Island Yard on April 1, 1976. The hope of broadening of their access to traffic to and from this area under the provisions of Section 305 of the Regional Rail Reorganization Act as amended was specifically held out by the Secretary of Transportation, Mr. William T. Coleman.

During the development of special legislation (HR 13138 S. 3306) to remedy this situation, the House Subcommittee on Transportation was assured that Section 305 was available for this purpose and no additional legislation was required.

On September 23, 1976, the State of New Jersey and the Port Authority of New York and New Jersey wrote to then Secretary of Transportation Coleman, and to the Chairman of the USRA, Mr. Arthur D. Lewis requesting again that the will of Congress be complied with in regard to the provision of competition by rail carriers in the Northeast and Midwest regions. The Delaware and Hudson advised by Mr. Coleman and Mr. Lewis of its willingness to cooperate in the analyses and studies that would be necessary to permit the Secretary to initiate the proposed transactions as supplemental transactions as stipulated in Section 305 of the Regional Rail Reorganization Act. Essentially, nothing of substance was heard from the Federal level until the receipt by Messrs. Sagner and Ronan of Secretary Brock Adams' letter, dated June 22, 1977 (Exhibit 111.1) [1] which announced that the Secretary had concluded that "development of the supplemental transaction pursuant to Section 305 would not be in the public interest

[1] Also attached is New England Regional Commission's (NERC) rebuttal to that position and statement of support for Legislation to aid D. & H. (Exhibit 111.2).

and should not be undertaken in the absence of extraordinary circumstances." The letter goes on to support the Secretary's conclusions in general terms by a selective quoting of portions of the Final System Plan.

The Delaware and Hudson Railway Company, after one year and four months of operation under the restrictions imposed by the USRA is finding that it is unable to continue to incur the financial losses incurred of approximately $250,000 per month. This carrier is now in the process of withdrawing the competitive service so needed by the Port of New Jersey and New York. The Secretary of Transportation has stated his unwillingness to consider any supplemental transactions as a means of fostering rail freight competition in one of the two largest cities in the United States in terms of carloads originated and terminated, that is Newark, New Jersey located in the Port District.

The Port of New Jersey and New York needs a competitive solution in terms of rail freight service. The withdrawal of D&H will leave Conrail in an essentially monopolistic situation. This does not present a bright prospect for the Port District or the neighboring states, New Jersey, New York, or Pennsylvania. The lack of a really competitive alternative to Conrail in the Port area also presents less than an optimistic outlook for the neighboring New England states. In all, the economic future of nine states in the Northeast can be adversely affected by a lack of competitive rail service: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania.

We urge the Congress to consider the matter of a competitive alternative to Conrail as one of utmost importance and to enact legislation permitting the expedited creation of such competition. As part of this legislation, D&H must be reimbursed for the losses sustained. The attached legislation is one part of such a legislative effort (Exhibit 111.3).

EXHIBIT 111.1

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 22, 1977.

Mr. ALAN SAGNER,
Commissioner, State of New Jersey Department of Transportation,
Trenton, N.J.

DEAR COMMISSIONER: In a letter dated September 23, 1976, the Department of Transportation of the State of New Jersey and the Port Authority of New York and New Jersey ("Port Authority") requested the initiation by the Secretary of Transportation ("Secretary") and the Board of Directors of the United States Railway Association ("USRA") of a supplemental transaction pursuant to section 305 of the Regional Rail Reorganization Act of 1973, as amended ("Act"), which would permit the Delaware and Hudson Railway Company ("D&H") to perform additional freight services in portions of northern New Jersey ("proposed transaction"). Specifically, the proposed transaction would permit the D&H to obtain the following rights from the Consolidated Rail Corporation ("Conrail"):

(1) unrestricted trackage rights to handle all conventional traffic, as well as intermodal traffic, to Oak Island Yard, Newark, New Jersey, and Greenville Yard, New Jersey, including access to the New York harbor marine operations conducted by the New York Dock Railway and the Brooklyn Eastern Dock Terminal Railroad;

(2) access on an open switching basis to all industries in the Central Railroad Company of New Jersey ("CNJ") Terminal District of Northern New Jersey, including the so-called "Chemical Coast" (Elizabeth to Perth Amboy, New Jersey) and former CNJ lines in Newark, Jersey City and Bayonne, New Jersey;

(3) trackage rights from Oak Island to a connection with tracks leased or owned by the Port Authority at Port Newark, thereby providing D&H trains with direct access to the Port Newark-Elizabeth Marine Terminal of the Port Authority;

(4) trackage rights between Oak Island and Marion Junction (Jersey City) for interchange with the New York, Susquehanna and Western Railroad Company; and

(5) interchange rights at Bound Brook, New Jersey, for traffic to and from former CNJ points, including intermodal traffic to and from the Somerville, New Jersey, ramp.

Although section 305 expressly precludes USRA from proposing supplemental transactions of this nature, the Secretary is so authorized. Comments on the proposed transaction have been received from Conrail, the Chessie System ("Chessie"), the Norfolk and Western Railroad, and numerous other parties. The purpose of this letter is to inform you of my conclusions with respect to the proposed transaction.

Before the Secretary will consider supporting a supplemental transaction, the proponents of such transaction must make the following showings:

(1) demonstrate that it would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region (section 305(a) of the Act);

(2) establish that it is in the public interest and consistent with the purposes of the Act and the goals of the Final System Plan ("FSP") (section 305(b)); and

(3) set forth its financial terms and demonstrate that such terms are fair and equitable to (i) the estates of the railroads in reorganization which have conveyed rail properties to Conrail in exchange for securities of Conrail and to any subsequent holders of such securities at the time of the supplemental transaction, and (ii) the holders of other Conrail securities (section 305(b) and (e)).

In approving the FSP pursuant to section 208(a) of the Act, the Congress necessarily found that the Conrail configuration recommended therein was in the public interest, that it was consistent with the express purposes of the Act, and that it would effectuate the goals set forth in section 206(a) of the Act, which include the following:

(1) the creation, through a process of reorganization, of a financially self-sustaining rail and express service system in the region;

(2) the establishment and maintenance of a rail service system adequate to meet the rail transportation needs and service requirements of the region;

Accordingly, I am of the view that the development of supplemental transactions pursuant to section 305 would not be in the public interest and should not be undertaken in the absence of extraordinary circumstances.

Based upon a thorough review of the proposed transaction and the numerous comments thereon by interested parties, I have concluded that it does not present much extraordinary circumstances and that, consequently, it should not be developed as a supplemental transaction pursuant to section 305. My reasons for this conclusion are set forth below.

In support of the proposed transaction, you argue that its consummation would "essentially provide D&H the same opportunity to render competitive service as the Final System Plan had recommended be given to the Chessie System." Although it is true that the proposed transaction would involve the grant of service rights similar to those that would have been made to the Chessie had it acquired the properties designated to it in the FSP, it must be borne in mind that USRA's recommendation of full-scale Chessie participation in the reorganization was based upon its finding that the Chessie would provide considerable financial benefits to the system in return for those designations.

USRA found that the Chessie would provide the following system benefits: privately funded competition to Conrail; a massive infusion of private capital for rehabilitation; the assumption of the interim operating losses of the bankrupt properties; and a reduction in the financial exposure of the public in the event that Conrail proves unsuccessful. I FSP 28 (1975). In the absence of Chessie participation in the reorganization, USRA concluded that the preferred structure in the region would be the "Unified Conrail" system comprising essentially all of the properties of the railroads in reorganization, including those offered to the Chessie. I FSP 28 (1975). Thus any railroad that wishes to assume the role accorded to the Chessie under the FSP must be willing to make a financial commitment equivalent to that offered by the Chessie. Unfortunately, none of the proponents of the proposed transaction have offered to provide financial benefits of that magnitude to the system.

In light of the reasoning behind USRA's recommendations concerning the Chessie's participation in the reorganization and the congressional approval of the FSP, the lack of a financial commitment commensurate with that offered by the Chessie virtually precludes a finding that the proposed transaction would promote the establishment and retention of a financially self-sustaining rail service system in the region adequate to meet the needs of the region unless it can be shown that, despite the absence of such a commitment, the proposed

transaction would be consistent with the FSP and would enhance the present system.

Conrail has submitted data which demonstrates that its traffic base would be eroded as a result of the proposed transaction, leading to a reduction in its ability to realize the operating efficiencies that served as the rationale for USRA's recommendation of a "Unified Conrail" configuration. This would lead to an increase in the expense of the system to the taxpayer and adversely impact on Conrail's ability to become financially self-sustaining. Clearly, such a result would be contrary to the purposes and goals of the Act. None of the proponents of the proposed transaction have persuasively demonstrated, however, that it would cause no financial hardship to Conrail, or that the proposed transaction would be in the public interest and consistent with the purposes of the Act and the goals of the FSP despite its adverse effect on Conrail, and there is considerable doubt as to whether such a showing could be made.

In developing the FSP, USRA decided to recommend an alternative structure for the region in the event that its preferred structure was not implemented due to the Chessie's failure to acquire the properties designated to it. USRA considered two alternative structures for the region, "MARC/EL–Conrail" and "Unified Conrail", and chose the "Unified Conrail" structure based upon the following reasoning:

> In selecting the recommended structure, a critical factor was that a solvent, private sector railroad would provide competition with private funding. . . .
>
> If Chessie does not participate, that competitive factor no longer applies. The Association's determination of the preferred alternative structure, therefore, focused on whether competition on the eastern seaboard is worth both the estimated additional federal funding required (due to loss of efficiency) and the higher federal risk inherent in creating a competitive system without private sector funding.
>
> USRA concluded that it is not. Creation of two public entities, Conrail and MARC/EL, would reduce the economic viability of one or both. In addition, it would raise the risk that, in the final analysis, neither competition nor adequate rail service would be maintained.
>
> Establishment of a Unified Conrail alone, on the other hand, would permit maximum efficiency and retention of adequate rail service—at the minimum cost to the taxpayer. I FSP 28 (1975).

The D & H's present reliance upon state and federal financing renders the proposed transaction more analogous to the "MARC/EL–Conrail" concept, which would have created two competing carriers, each funded by the government, out of the railroads in reorganization, than to the FSP's preferred alternative of full-scale Chessie participation.

It should also be noted that in the course of developing the FSP, USRA carefully considered the D & H's proper role in the reorganization and concluded that it should be offered specified trackage rights in the context of the preferred alternative structure. The D & H was also offered trackage rights over the former Erie Lackawanna line between Binghamton and Buffalo, New York, in the event that the Chessie decided not to acquire such properties. The D & H subsequently acquired all of these rights. USRA did not find, however, that providing trackage rights to the northern New Jersey markets in favor of the D & H or any of the smaller solvents would be an adequate substitute for the level of Chessie participation recommended in the preferred FSP alternative. The previous rejection of the role contemplated for D & H by the proposed transaction militates against its development as a supplemental transaction.

I am also convinced that the development of the proposed transaction as a supplemental transaction would not be in the public interest because the evaluations required under the section 305 process would necessarily be based upon Conrail's limited operating history, which would not reflect its plans for the rehabilitation and improvement of the properties that would be affected by the proposed transaction.

Bearing in mind that the FSP was the culmination of a planning process which expended approximately $40 million and that the present Conrail configuration was approved by USRA and the Congress after their consideration of numerous alternatives, I am convinced that the public interest would be served best by not altering the present systems, except under extraordinary circumstances, until it has had a reasonable opportunity to demonstrate its ability to provide adequate service to the shipping public at the lowest cost to the federal taxpayer. As previ-

ously noted, I fail to find that the proposed transaction presents such extraordinary circumstances.

Sincerely,

BROCK ADAMS.

EXHIBIT 111.2

NEW ENGLAND REGIONAL COMMISSION,
Boston, Mass., June 30, 1977.

Hon. BROCK ADAMS,
Secretary of Transportation, Department of Transportation,
Washington, D.C.

DEAR SECRETARY ADAMS: This letter is written in response to your recent decision denying supplementary transfers of rail properties to the Delaware and Hudson and the Providence and Worcester Railroads under the authority of Section 305 of the 4R Act.

It is not the purpose of this letter to question the authority of the Secretary to make such decisions. Rather it is intended to indicate to you certain concerns which New England has with regard to the outcome of the Final System Plan. We fear for the viability of those carriers which have attempted to survive, surrounded by ConRail, through extensions of their operating rights. The case of the Delaware and Hudson requires special attention.

When the negotiations between the Chessie System and USRA failed to produe a strong competitor to ConRail in the New York/New Jersey region, USRA recognized that the total absence of competition would violate the intent of the 3R Act. In response, USRA offered certain additional traffic rights to the D&H to strengthen it and to provide at least some competition in the New York market. Despite the full support of the states and the "independent carriers", and the D&H's valiant efforts to expand their system by 100% overnight, the plan has failed. The D&H has had to request permission to withdraw from the Oak Island terminal on the grounds that the extensions was causing a loss of $250,000 in cash per month. I would argue that any extension of this sort, defensively taken by the carrier to protect itself from engulfment constituted bad planning on the part of USRA. Instead, it indicated a serious failure to feel any real concern for the need to preserve competition. This is all the more evident when one considers the reaction to the D&H request to withdraw from the New York market. USRA became not only its strongest supporter on this issue, but has predicated future aid to the D&H on the accomplishment of the withdrawal! So much for competition to the largest metropolis in the nation.

New England, while not directly involved in the New York market, views with great concern the present difficulties of the D&H. We have been informed that it was only by virtue of the latest grant from New York State some three weeks ago that they managed to make their payroll the following week. The D&H is a major bridge to this region, and fully 45% of the traffic on the Boston and Maine in 1973 was interchanged with the D&H. Clearly, the insolvency of the D&H would have a strong negative impact on service in New England, which we would view with alarm. While the New England Regional Commission does not wish to identify itself with the fortunes of any particular private concern, we do not desire to go through the exercise of salvaging service on an important route after it has been brought to a halt, especially when a little advance planning would have provided us with a sound and permanent solution.

Our concern is simple: the D&H must be kept whole and operating until a decision can be made with regard to its role that is in the best interests of the public. We appreciate that USRA has an obligation to protect its investments in both ConRail and the D&H. But, a precipitate bankruptcy would be the most costly possible situation to rectify, given the attendant problems of dealing with a carrier which has become a ward of the courts, and the threat of suit which would result from a ConRail-type solution. A planned approach would allow us to make much better use of the available resources, and would provide a much better guarantee of the funds already invested.

I would also like to bring to your attention another factor. It has been reported to me by reliable sources that sensitive and confidential information which the D&H has provided to USRA has been transmitted routinely to ConRail within 24 hours, and often in as little as three hours. I believe that this situation, if proven, would indicate that USRA has a serious problem of conflict of interest. As a public agency, USRA has a clear obligation to protect the rights of all its borrowers. The magnitude of the loan or the relative importance of the bor-

rower can in no way affect this principle. ConRail, whether it desires to be so or not, is a monopoly carrier created by the public. It is therefore incumbent on the public to exercise extreme restraint and care in dealing with the competitive relationships between ConRail and other smaller carriers. And it must be a cardinal principle of public action that the rights of all are equally protected, with a special effort made to assure that the smaller and weaker are protected from the stronger.

The Federal Railroad Administration has recently proposed to perform a joint study with the New England Regional Commission of the rail system serving New England, including the D&H. We believe that there can and must be a solution now which eliminates the basic conditions which have precipitated so many bankruptcies in the past. This study is intended to provide sound analyses of all the possible re-configurations of the New England/D&H system, so that decisions can be made with regard to the preferred restructuring and implementation may be sought. It is our contention that, in fact, the Final System Plan failed to make adequate provision for the non-ConRail carriers in the region, and that their ultimate viability remains in doubt. If, as you well stated in your recent letter to Dr. Ronan of the Port Authority of New York and New Jersey, the Final System Plan was predicated on the need to minimize public investment, I believe that USRA erred badly. The purpose of the Final System Plan was intended to be dual: it was to provide for a self-sustaining ConRail System, and it was to assure that the other carrier in the Region were protected. Clearly, this has not been the case, and FRA has now begun to prepare contingency plans.

It would appear that the USRA failed the public interest when it determined that the inability of the Chessie System to make the acquisitions in New York and New Jersey prevented public support of an alternative. The public funding of the ConRail system was made on the premise that this funding was a loan to be repaid. Thus, while the funds do not come from the private sector, they are not in the same category as grants. Nor is the present commitment to the D&H. It would appear that sound public policy would acknowledge this reality. The argument that the absence of private funding precluded public investment to accomplish an end which was admittedly in the public interest appears specious. If the purpose was in the public interest, then the question should really have been whether there was an overriding reason which precluded the public from making the necessary loans to carry it out. Such a determination was not made, other than by default. The result may well be to require the planning for a second ConRail-type system serving New York and New England. The savings which were the rationale for the initial decision would then prove to be most illusory.

I would therefore request that the Department of Transportation carefully consider the above reasoning, and that it take every step necessary to preserve service on a solvent D&H until such time as the joint FRA/NERCOM studies are completed and a plan has been developed which will accomplish the necessary restructuring leading to viability of all rail service in the region. You have taken a very courageous stand in your support of public transportation as an alternative to rebates for purchase of fuel-efficient automobiles. The railroads are well known to be the most fuel-efficient form of surface transportation for freight. You have been on record time and again in support of the revitalization of the nation's rail industry. However, such a position must at times require the unpleasant task of rectifying errors from the past, and of making public funds available to buy the time necessary to plan for sound solutions when present alternatives are so clearly unacceptable.

I would urge therefore that you utilize your position as a Board Member of USRA to make this position clear, and to secure its acceptance so that the D&H may continue to provide the full range of services upon which so much of the economy of the Northeast depends.

Sincerely,

J. DAVID STEIN,
Director, Transportation Program.

EXHIBIT 111.3

EMERGENCY CORRECTION OF FINAL SYSTEM PLAN DESIGNATIONS OF PROPERTY OR RIGHTS TO PROFITABLE RAILROADS

SEC. 1. POLICY—Congress finds that as a result of the failure of the Chessie System to acquire certain rail properties and rights pursuant to the Final System Plan: (1) that other profitable railroads in the Region (as defined by the

Regional Rail Reorganization Act) undertook to make extensions of their services in order to maintain essential and competitive rail services to the public and to effectuate the statutory goals of the Plan; (2) that these extensions were, and of necessity had to be, planned on an emergency basis and that both federal and railroad planning therefor was incomplete; (3) that in some cases the resulting extensions were either unprofitable or failed to return profits commensurate with the assets pledged or led to designations that are harmful or otherwise conflict with other designations made to the Corporation; (4) that the federal government which planned and authorized these extensions is responsible to correct resulting problems; and (5) that it is essential to provide a mechanism to immediately correct the problems inadvertently created for profitable railroads and the Corporation.

SEC. 2. Section 1(16) of the Interstate Commerce Act (49 U.S.C. 1(16)) amended by adding at the end thereof the following new paragraph.

"(c) If a profitable railroad which accepted a designation pursuant to Final System Plan files a petition with the Commission alleging that a designation accepted by it pursuant to the Final System Plan—

"(1) is unprofitable, or,

"(2) leads to inefficient railroad service

the commission shall investigate said allegation forthwith and within 30 days, publish a Report in the Federal Register setting forth its findings with respect to the profitable railroad's allegation. This Report shall include—

"(1) a conclusion as to the accuracy of the profitable railroad's claim together with a finding as to the amount of operating loss incurred under each designation problem claimed

"(2) a recommendation of at least one method to correct designation problems alleged in the profitable railroad's petition, and

"(3) a statement of the effect of implementing any such recommendation(s) on the Corporation.

"The Commission is directed to work closely with the Corporation and the Governors of the states served in the preparation of such Report.

"The petitioning railroad shall be reimbursed up to the total operating loss of its extensions undertaken pursuant to the Final System Plan, as certified by the Commission. Such reimbursement shall be paid promptly in cash directly to the railroads, as drawdown is authorized by the Commission, with no repayment by the railroad required. To the extent directed by the Commission, reimbursements may be made to cover the cost of implementing the Commission's recommended method of correcting the designation error or service problem found. The Commission shall certify promptly to the Secretary of the Treasury the amount of payment to be made to a petitioning railroad under the provisions of this subdivision. Payments required to be made to a petitioning railroad under the provisions of this subdivision shall be made by the Secretary of the Treasury from funds hereby authorized to be appropriated in such amounts as may be necessary for the purpose of carrying out the provisions hereof. To the extent that funds available are not adequate to cover all reimbursements certified by the Commission, funds shall be paid to reimburse the operating loss found for each extension of service undertaken by a petitioning railroad pursuant to the Final System Plan in the order of descending amount of loss until all funds are expended.

"The terms 'Corporation' and 'profitable railroad' are used in this paragraph as such terms are defined in 45 U.S.C. § 702, subdivisions (3) and (11) respectively.".

Mr. ELKINS. One of the things we would like to submit, and we will do it in letter form, is what Mr. Rossi brought up. It is an application for State rail planning assistance.

This is the document according to FRA regulations that they require from a State to get their $50,000 or whatever the amount of rail planning money may be.

The point we would like to make with this, weightwise this weighs 2¼ pounds.

Mr. Rossi, in the New York process—and they have several State agencies that must get involved in project. To spend $100 million, their amount of paper is incredibly simple compared to this.

We think this would be worth the committee analysis.

We feel the States are closer and want to get the job done.

This is the amount of documentation needed only to begin to do a State rail plan.

Senator DURKIN. The report will be left open. If you want to complement or dispute the testimony of other people who have testified today, we would appreciate that as well.

Mr. ELKINS. Thank you for the opportunity, Senator.

Mr. Kinstlinger from Colorado will be the next witness.

Mr. KINSTLINGER. I would like to echo some of the concerns expressed by State representatives.

We have had problems with FRA. It took them 4½ months to approve our rail planning application. We made inquiries of them in March of this year to which they have not responded.

It is interesting to note that an attachment to Mr. Sullivan's testimony today shows as of May $61,000 was reallocated to the State of Colorado and this is the first time we have been informed of it, when I had the opportunity to review Mr. Sullivan's testimony.

Senator DURKIN. This was a worthwhile trip, then.

Mr. KINSTLINGER. Let me express our concerns.

We have reviewed these with the States of Arizona, Nevada, Utah, and Wyoming.

Section 803 of the 4–R Act which discussed rail service assistance emphasizes the branch line service.

Section 803 permits Federal funding for only one type of project, the branch line abandonment.

The Western States are in the awkward position of being able to receive funds only for rail problems at the bottom of their priority list.

The main need in Colorado and the Western States is funding to relieve the impacts that will be created by movements of coal trains resulting from energy resource development in the West.

The Western States do not consider branch line abandonment as the main rail problem.

Most of these States, Colorado included, are building more railroads than they are abandoning.

To emphasize this point, we reviewed the system diagram maps submitted to the ICC by the railroads.

If we look at just category 1, lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within 3 years, and category 2, lines or portions of lines potentially subject to abandonment application because of either anticipated operating losses or excessive rehabilitation costs, we find that in Colorado the total mileage in both of these categories is slightly under 11 miles out of a total of over 3,800 miles of rail lines in the State.

Similar figures are shown for Utah where only 9.2 miles are listed in categories 1 and 2, and for Wyoming where no mileage is listed in these categories.

These States have Federal funds available for addressing the branch line abandonment problems when there is no evidence that there will be significant branch line abandonments.

Recognizing that the increased movement of unit coal trains through Colorado was becoming a major problem to communities, the depart-

ment of highways conducted a coal train assessment study last year. I have copies of the final report here for your inspection.

The report defines many problems that will occur in Colorado as a result of this increased rail movement.

Increased noise levels will impact communities that have allowed land uses incompatible with railroad operations.

The most significant problems are at rail-highway grade crossings. Increased air pollution will result from the increased rail traffic and from the increase in idling automobiles at the grade crossings.

There are currently 366,000 vehicles per day at Colorado grade crossings on the present Wyoming-to-Texas coal train routing.

Using our lowest projections of coal train movements, this results in an annual road user cost of $2.4 million.

These figures could increase to 614,000 vehicles per day and $4 million per year if the rail routing north of Denver is changed to pass through the larger front range communities.

The construction of grade separation structures would greatly reduce the highway user delays and road user costs. The report identifies the needs for up to 25 grade separation structures now.

There is no FRA money for this problem.

Funds from the FHA are completely inadequate in that our annual appropriation allows us to build less than 1 of these 25 needed separations each year.

The coal train assessment report acknowledges this funding problem by referring that existing local and State resources and Federal programs are entirely inadequate for the apparent needs along the front range corridor.

Existing Federal legislation should be amended to make additional funds available to ameliorate these accelerating problems.

Of particular importance is the need to amend the formula for distribution of Federal funds to correspond to all rail line mileage in the State classified as common carrier.

Funds appropriated to the States under section 803 of the 4–R Act should be eligible for any worthwhile rail projects identified as high priority in a State's approved rail plan.

These projects could include grade separation structures, rail relocations, highway relocations, or land-use changes to reduce adverse community and safety impacts resulting from increased rail traffic as well as preservation of branch line service now included.

In reviewing S. 1793, we offer the following comments:

1. Amendments to the DOT Act.

A. Proposed amendments to section 5(g) of the DOT Act.

As a minimum, the 100-percent Federal share of costs of any rail services assistance program should be extended to September 30, 1977, as is proposed in the House version of the DOT Act amendments, H.R. 7370.

However, we feel the time period for each of the Federal share categories of funding in the original act, section 803 should be extended 1 year. This would mean the 100-percent funding would be extended to June 30, 1978.

We have been told recently by the FRA to begin our final process. We are beginning the planning but 100-percent Federal funds are no longer available.

time the states are ready to begin the development of the rail plan. This situation in itself justifies the extension of the 100 percent Federal assistance.

We support the new provisions for in-kind benefits. We think the term "planning" should be included in the term "maintenance, rehabilitation, improvement, or acquisition project."

B. Proposed Amendment to Sub-section 5(h) of the Department of Transportation Act.

We are extremely opposed to the proposed amendment as written. A sentence in the original Section 803 reads, "Notwithstanding the provisions of the preceding sentence, the entitlement of each state shall not be less than 1 percent of the funds appropriated." This sentence has been deleted in the amended version. Citing the figures previously quoted, many Western States would be eligible for virtually no funds under this amendment because they have very little branch line abandonment mileage to qualify for the funds. Even now without the addition of the new categories to the funding formula, these Western States are receiving funds only because of the minimum 1 percent requirement. This 1 percent requirement must remain in the Act as a minimum. Better yet would be a distribution formula based on total rail mileage in the State since the various needs I have cited occur on main lines as well as branch lines. Looking at the Western States, that is where the problems are; on all the lines.

C. Proposed Amendments to Section 5(k) of the Department of Transportation Act.

While not particularly relevant to Colorado and other western states, we welcome the new clause (C) permitting the states to subsidize lines of railroads which have been proven to be losing money. We also welcome the new paragraph (2) that permits new categories of rail lines to be included in the eligible lines for rail service assistance, as follows:

Category 1; lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years.

Category 2; lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues.

Category 3; lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission.

D. Proposed Amendment to Section 5(1) of the Department of Transportation Act.

We feel the proposed amendment will be very beneficial to the states and to the railroads as it will allow a state to proceed with a project exceeding a single year's allocation and still expect full reimbursement from succeeding allocations. This provision addresses a problem which has arisen because of a very restrictive interpretation by FRA of its funding authority whereby FRA has required work for track rehabilitation, and the correction of deferred maintenance to be approved, funded, undertaken and completed within one annual period. Such an approach fails to recognize that no rational correlation exists between statutory funding periods and the railroad construction season, that such projects by definition have a useful life greater than one year, and that such a requirement requires a state to forego significant economies resulting from the initiation of a project when the cost exceeds a single year's allocation.

E. Proposed New Paragraph (n)

We feel this new paragraph is an excellent idea. It could save all parties involved from engaging in adversary roles at a later date as well as saving valuable time and effort as it allows expenditures of funds for a project prior to application by the railroads to the ICC for abandonment.

F. New Paragraph 5(o)

We offer wholehearted support for this new paragraph that doubles the apportionment for planning from $5 million a year for 3 years to $10 million a year for 5 years. The present planning funds are completely inadequate to do a proper job of developing a rail plan. Some states under the existing 4R Act have been applying for rail planning grants up to $1 million. This should indicate the scope of funds necessary to do an adequate plan. Other states, Colorado included, are limited to only about $50,000 per year for 3 years. There is definitely a need for more rail planning funds to develop a proper rail plan.

II. Amendments to the Rail Service Act.

We have no comments to the proposed amendments to the Rail Passenger Service Act.

State. Similar figures are shown for Utah where only 9.2 miles are listed in Categories 1 & 2; and for Wyoming where no mileage is listed in these categories. These states have Federal funds available for addressing the branch line abandonment problems when there is no evidence that there will be significant branch line abandonments.

Recognizing that the increased movement of unit coal trains through Colorado was becoming a major problem to communities, the Department of Highways conducted a Coal Train Assessment Study last year. I have copies of the final report here for your inspection. The report defines many problems that will occur in Colorado as a result of this increased rail movement. Increased noise levels will impact communities that have allowed land uses incompatible with railroad operations. The most significant problems are at rail-highway grade crossings. Increased air pollution will result from the increased rail traffic and from the increase in idling automobiles at the grade crossings.

There are currently 366,000 vehicles per day at Colorado grade crossings on the present Wyoming to Texas coal train routing. Using our lowest projections of coal train movements, this results in an annual road user cost of $2.4 million. These figures could increase to 614,000 vehicles per day and $4 million per year if the rail routing north of Denver is changed to pass through the larger front range communities.

The construction of grade separation structures would greatly reduce the highway user delays and road user costs. The report identifies the needs for up to 25 grade separation structures now. There is no Federal Railroad Administration money for this problem. Funds from the Federal Highway Administration are completely inadequate in that our annual appropriation allows us to build less than one of these 25 needed separations each year. The Coal Train Assessment Report acknowledges this funding problem by referring that existing local and state resources and federal programs are entirely inadequate for the apparent needs along the front range corridor. Existing federal legislation should be amended to make additional funds available to ameliorate these accelerating problems. Of particular importance is the need to amend the formula for distribution of federal funds to correspond to all rail line mileage in the State classified as common carrier. Funds appropriated to the States under Section 803 of the 4R Act should be eligible for any worthwhile rail projects identified as high priority in a State's approval Rail Plan. These projects could include grade separation structures, rail relocations, highway relocations or land use changes to reduce adverse community and safety impacts resulting from increased rail traffic as well as preservation of branch line service now included.

Colorado will need $120 million of road work for coal energy transportation, $100 million for road work for oil shale development and $59 million for road work for uranium mining, all by 1985. Transportation of energy is a national concern and states in the Rocky Mountain Area should not bear the brunt of the nation's needs. The Federal Government should develop an aid program for energy routes which includes, but is definitely not limited to, 4R funds. Federal funding for energy routes should be a minimum of 90 percent of the total costs. Various modes of transportation should be emphasized.

In reviewing Senate Bill 1793, we offer the following comments:

I. Amendments to the Department of Transportation Act.

A. Proposed Amendment to Section 5(g) of the Department of Transportation Act.

As a minimum, the 100 percent Federal share of costs of any rail services assistance program should be extended to September 30, 1977, as is proposed in the House version of the Department of Transportation Act Amendments (HR 7370). However, we feel the time period for each of the Federal share categories of funding in the original 4R Act, Section 803 should be extended one year. This would mean the 100 percent funding would be extended to June 30, 1978. Our reasoning for this is that the Congress originally established an initial period of 100 percent Federal assistance for the states to organize their rail freight programs and work to qualify for Federal assistance, particularly in the development of a Statewide Rail Plan. That rationale for 100 percent Federal assistance still exists because these states have had inadequate lead time to organize and qualify for Federal assistance. States that do not have a Department of Transportation have had to go to their Legislatures to obtain enabling legislation to embark on the Section 803 program. Applications to the Federal Railroad Administration for rail planning assistance have taken 4½ months to process. This has resulted in the expiration of the 100 percent Federal assistance period by the

time the states are ready to begin the development of the rail plan. This situation in itself justifies the extension of the 100 percent Federal assistance.

We support the new provisions for in-kind benefits. We think the term "planning" should be included in the term "maintenance, rehabilitation, improvement, or acquisition project."

B. Proposed Amendment to Sub-section 5(h) of the Department of Transportation Act.

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We feel the proposed amendment will be very beneficial to the states and to the railroads as it will allow a state to proceed with a project exceeding a single year's allocation and still expect full reimbursement from succeeding allocations. This provision addresses a problem which has arisen because of a very restrictive interpretation by FRA of its funding authority whereby FRA has required work for track rehabilitation, and the correction of deferred maintenance to be approved, funded, undertaken and completed within one annual period. Such an approach fails to recognize that no rational correlation exists between statutory funding periods and the railroad construction season, that such projects by definition have a useful life greater than one year, and that such a requirement requires a state to forego significant economies resulting from the initiation of a project when the cost exceeds a single year's allocation.

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II. Amendments to the Rail Service Act.

We have no comments to the proposed amendments to the Rail Passenger Service Act.

III. Amendments to the Regional Rail Reorganization Act of 1973.

This Act applies only to the 17 states in the Northeastern Region and has no effect on the Western States. However, we note that Section 402(c) of the Regional Rail Reorganization Act of 1973 is proposed to be amended by adding a new paragraph that permits two or more states to join together on rail service assistance projects. We think this an excellent idea. We also feel that two or more states should be permitted to join together for rail planning purposes. Our concern is that this particular new paragraph only applies to the 17 states covered under the Regional Rail Reorganization Act of 1973.

We feel a similar paragraph should appear under Section 803 of the 4R Act so that all states in the nation may be permitted to pool their efforts.

IV. Amendments to the Interstate Commerce Act.

We are concerned about the proposed new sub-paragraph (10) in Section 1a of the Interstate Commerce Act. We interpret this paragraph to mean if the state does not respond to a cooperative assistance proposal from the railroads, or if the state fails to make a payment, the ICC can deem this as grounds to permit the finding that the public convenience and necessity permit the abandonment or discontinuance of such line of railroad. We feel sub-paragraph (10) should have another sentence that states this should not preclude the opportunity for a public hearing or investigation as prescribed in sub-paragraph (3) of section 1a of the ICC Act.

We also feel that a cooperative assistance proposal from the railroads should be limited to lines categorized on the system diagram maps submitted to the ICC as Categories 1, 2, and 3. Other lines, not so identified, should not be made subject to rail abandonment efforts by the railroads.

V. Amendment to the Railroad Revitalization and Regulatory Reform Act of 1976.

A. We are very pleased to see the addition of the new Section 811, Acquisition of Abandoned Railroad Rights-of-Way for Recreational Uses. We feel that abandoned railroad rights-of-way have many possibilities for recreational use and we certainly encourage their development for recreation.

B. We endorse the proposed amendment to Section 809d of the 4R Act. We are very pleased to see that funds will be appropriated to the Secretary of the Interior to carry out the provisions of Section 809 of the 4R Act.

Mr. Chairman and Members of the Committee, I certainly appreciate the opportunity to be here and to speak to you today about our concerns on Senate Bill 1793. I will be most happy to answer any questions regarding my testimony. Thank you.

Senator DURKIN. Colorado and the Western States might provide the six or seven we need for minimum funding.

We are running into a time problem now, but I would like you to submit for the record, and for the committee, your ideas of how the block grant program could work, but with sufficient safeguards that an ambitious, calculating Governor couldn't use it for other than the purpose intended.

Mr. KINSTLINGER. Let me point out that the highway program works on block grant.

At the beginning of the fiscal year we were informed that we are obligated to authorize *x* number of dollars.

We submit projects and they review them to make sure they are consistent.

At the beginning of the year we are told how much money and we can begin to obligate it subject to reviews by Federal highways.

It has worked well in the highway area.

Senator DURKIN. We will have to get some of these decisions out of Washington. It is musclebound. Nothing has happened.

Wait until—you think you have problems now. Wait until the Department of Energy gets you. Con Edison will be bringing you insulation as well as the blackout.

Mr. ELKINS. We will get that to you and we will outline a process we have had under discussion and we will put in the necessary safe-

guards to prevent an overaggressive State from being frivolous with the project grants.

As time permits, we would like to have Mr. Stangl from New Jersey make comments on problems that are facing the Northeast corridor States in particular.

Mr. STANGL. Thank you. I promise to allow you to get to the floor to vote in time. I appreciate the chance to appear before you today. I would like to applaud the sensitivity that you in particular have demonstrated to the needs of the variety of organizations speaking on this legislation.

Senator DURKIN. You are fortunate, Senator Williams has been very deeply interested in the whole transportation field and area. You in New Jersey are fortunate.

Mr. STANGL. I agree with that 100 percent. We are fortunate to have him here. I would like to direct my comments to S. 1890 at this time, which amends S. 1793.

The 3–R Act contains provisions that insure ConRail be bound to contracts in effect at the time of enactment. The New Jersey Department of Transportation agreement with the former Erie Lackawanna Railway is one example of such a contract. The Erie Lackawanna lines, which carry some 70,000 passengers per day, make up the largest commuter rail operation in New Jersey. Currently it is unclear whether the provisions of section 304(e) of the 3–R Act govern such service when binding agreements such as the Erie Lackawanna contract expire.

Section 201(a) of S. 1890 amends the 3–R Act to assure, immediately upon the expiration of such contracts, ConRail is bound to continue providing passenger service when offered a subsidy in accordance with RSPO compensation standards. If this legislation is enacted, thousands of travelers will be protected from the uncertainties of future service discontinuances.

State and regional transportation agencies would be protected from ConRail's use of the threat of imminent discontinuance as a lever to obtain financial concessions beyond those contained in RSPO standards.

Finally, and equally important, ConRail would be assured of receiving just and adequate compensation for providing such services. It is for these reasons that we strongly support this section of S. 1890.

EXPANSION OF SERVICE

The New Jersey Department of Transportation, as well as other governmental transportation agencies, currently is considering the expansion of service beyond the level which existed at the time of conveyance. Included in such expansion would be extensions of service onto new lines, modifications of routings on the existing network and increases in train frequencies. Like subsection 201(a), subsection 201(b) obligates ConRail to provide such service and in turn assures fair reimbursement to ConRail by Government transportation agencies in accordance with RSPO standards.

While I am very much in favor of the provisions of this subsection, I would like to suggest a few changes which would aid in the achievement of the goals described above. First, it is specified that additional service be provided pursuant to RSPO regulations. I would like to

suggest that it be specified that such services should be provided in accordance with existing RSPO regulations, since we feel that the existing regulations are quite adequate to accomplish this purpose.

Second, I would like to suggest as an addition to section 201(b), a provision for resolution of possible objections by ConRail that additional commuter passenger service would result in substantial interference to existing freight service.

I would like to enter into the record a proposed amendment to section 201(b) of S. 1890, which deals with this problem—a copy is appended to this testimony.

The proposed amendment designates the Rail Service Planning Office as the final arbiter of such disputes. In the matter of interference by commuter trains with ConRail freight movements or intercity rail passenger trains on Amtrak properties, the operations review panel would be the final arbiter under current law.

In addition, it establishes that on ConRail properties, the burden of proof for contentions of freight interference lies with ConRail in accordance with the Federal policy favoring the expansion of rail passenger transport where feasible. I recognize the importance not only to ConRail, but to the economy of New Jersey, as well, of maintaining reliable, on-time freight service, but unfounded claims of freight interference cannot be permitted to act as an obstacle to the extension and improvement of needed commuter rail service.

INDEMNIFICATION

We support section 301 which deals with a liability insurance problem that recently threatened the continued existence of a number of commuter rail lines in New Jersey. However, we will be submitting to the committee some suggested changes to this section.[1]

Currently, liability for personal injury claims arising from commuter rail service provided by ConRail is partially covered by the railroad's insurance policy.

The policy covers settlements up to $50 million per occurrence. The subsidizing agency must pay the cost of liability claims below $2 million per occurrence, as well. I would like to provide you with an example illustrating the importance of section 301. The inability, by subsidizing State government, to undertake a limitless contingent liability led to ConRail's posting of notices to discontinue service last April. These notices were later withdrawn only after New Jersey Department of Transportation had obtained a favorable ruling from the U.S. District Court in the District of New Jersey.

We had to go into court to get ConRail to take down notices so we could discuss this thing. We are faced with a risk there, and we feel only the Federal Government can be the guarantor of that type of situation and Senator Williams' amendment speaks to that.

Section 402 of S. 1890 amends the 3–R Act in regard to the determination of the Federal share for section 17 assistance for deferred maintenance projects.

Anyone who has ridden commuter railroads in the Northeast in the last decade has probably been inconvenienced by equipment malfunc-

[1] See p. 182.

tions, signal breakdowns, or rough roadbeds. As railroad companies found themselves in a struggle for corporate survival, investments in routine preventative maintenance suffered.

In enacting the 3–R Act, as amended, Congress recognized that State, regional, and local transportation agencies which have subsidized commuter service cannot be expected to bear the exclusive burden of bringing physical plant back to an acceptable level.

The New Jersey Department of Transportation has requested from the Urban Mass Transportation Administration $18 million in deferred maintenance assistance. Our original application included important investments in rolling stock, signals, and track.

The projects for which we have chosen to use the available funds are of crucial importance to passenger safety and convenience and system reliability. As of this past spring, we have only been assured of receiving less than $3 million. Additional funds are expected due to a $15 million increase in the above-noted section 17 budget request wisely voted by Congress for fiscal year 1978.

Because of the scarceness of local resources, it is important that the State obtain maximum use of available Federal funds. An impediment to this is Urban Mass Transportation Administration's interpretation that the Federal share is dedicated by the date of performance of work. This will serve to limit the size of the State's deferred maintenance program.

Certain of the proposed projects involve extensive work which will take a considerable period of time to perform. Some projects will be performed by railroad work forces whose pace of activity is not under the control of public agencies.

Basically, what the amendment does is establish the date of initiation as the guiding factor in what the share will be, and we think that that would be of use to us. It also makes the determination of the Federal share in section 17, deferred maintenance, comparable to the improvements in the rail assistance program, which is set forth in section 2(a) of 1972.

I have one other thing to say. That is to support the testimony I heard by Senator Pell regarding the amendment on the Northeast corridor. The debate over the State share is a difficult one. It is my view that requiring the States to put up significant amounts of money will impede that program. We will be obligated to put in excess of $30 million. We don't have it. We don't have that money. If this means the program will be held up, then the whole Northeast corridor program will suffer.

We support the amendment on the fencing question and elimination of the 50-percent State share. Thank you.

[The statement follows:]

STATEMENT OF PETER E. STANGL, ASSISTANT COMMISSIONER FOR PUBLIC TRANSPORTATION, STATE OF NEW JERSEY

Mr. Chairman, members of the subcommittee on Surface Transportation of the Senate Committee on Commerce, Science, and Transportation, I am pleased to come before you today to speak about important issues concerning the future of rail transportation in our Nation. I wish to applaud the sensitivity you have demonstrated to the needs of the variety of organizations, interests and agencies involved in the provision and utilization of freight and passenger rail service.

I would now like to direct my comments to S–1890, a bill introduced by Senator Harrison Williams which amends S–1793. My comments will focus on several par-

ticular areas of concern to the State of New Jersey: Continuation of services governed by RRRA 303(b)(2), such as those of the former Erie Lackawanna; expansion of commuter rail service through added lines, new routings, or increased frequency; indemnification; and deferred maintenance.

CONTINUATION OF SERVICE

The RRR Act contains provisions assuring that Conrail be bound to contracts which were in effect at the time of its enactment. The NJDOT's agreement with the former Erie Lackawanna Railway is one example of such a contract. The Erie Lackawanna lines, which carry some 70,000 passengers per day, make up the largest commuter rail operation in New Jersey. Currently it is unclear whether the provisions of Section 304(e) of the RRR Act govern such service when binding agreements such as the Erie Lackawanna contract expire.

Section 201(a) of S–1890 amends the RRR Act to assure, immediately upon the termination of expiration of such contracts, that Conrail is bound to continue providing passenger service when offered a subsidy in accordance with RSPO compensation standards. If this legislation is enacted, thousands of travellers will be protected from the uncertanties of future service discontinuances. State and regional transportation agencies would be protected from Conrail's use of the threat of imminent discontinuance as a lever to obtain financial concessions beyond those contained in RSPO standards. Finally, and equally important, Conrail would be assured of receiving just and adequate compensation for providing such services. It is for these reasons that we strongly support this section of S–1890.

EXPANSION OF SERVICE

The NJDOT, as well as other governmental transportation agencies, currently is considering the expansion of service beyond the level which existed at the time of conveyance. Included in such expansion would be extensions of service onto new lines, modifications of routings on the existing network and increases in train frequencies. Like subsection 201(a), subsection 201(b) obligates Conrail to provide such service and in turn assures fair reimbursement to Conrail by Government transportation agencies in accordance with RSPO standards.

While I am very much in favor of the provisions of this subsection, I would like to suggest a few changes which would aid in the achievement of the goals described above. First, it is specified that additional service be provided pursuant to RSPO regulations. I would like to suggest that it be specified that such services should be provided in accordance with existing RSPO regulations since we feel that the existing regulations are quite adequate to accomplish this purpose.

Second, I would like to suggest as an addition to section 201(b), a provision for resolution of possible objections by Conrail that additional commuter passenger service would result in substantial interference to existing freight service. I would like to enter into the record a proposed amendment to section 201(b) of § 1890 which deals with this problem. (A copy is appended to this testimony).

The proposed amendment designates the Rail Service Planning Office as the final arbiter of such disputes. In the matter of interference by commuter trains with Conrail freight movements or intercity rail passenger trains on Amtrak properties, the Operations Review panel would be the final arbiter under current law. In addition, it establishes that on Conrail properties, the burden of proof for contentions of freight interference lies with Conrail in accordance with the Federal policy favoring the expansion of rail passenger transport where feasible. I recognize the importance not only to Conrail but to the economy of New Jersey as well, of maintaining reliable, on-time freight service but unfounded claims of freight interference cannot be permitted to act as an obstacle to the extension and improvement of needed commuter rail service.

INDEMNIFICATION

We support section 301 which deals with a liability insurance problem that recently threatened the continued existence of a number of commuter rail lines in New Jersey. However, we will be submitting to the committee some suggested changes to this section.

Currently, liability for personal injury claims arising from commuter rail service provided by Conrail is partially covered by the railroad's insurance policy. The policy covers settlements up to $50 million per occurrence. The subsidizing

agency must pay the cost of liability claims below $2 million per occurrence as well. I would like to provide you with an example illustrating the importance of section 301. The inability, by subsidizing State government, to undertake a limitless contingent liability led to Conrail's posting of notices to discontinue service last April. These notices were later withdrawn only after NJDOT had obtained a favorable ruling from the U.S. District Court in the District of New Jersey.

DEFERRED MAINTENANCE PAYMENTS

Section 401 of § 1890 amends the RRR Act in regard to the determination of the Federal share for section 17 assistance for deferred maintenance projects. Anyone who has ridden commuter railroads in the Northeast in the last decade has probably been inconvenienced by equipment malfunctions, signal breakdowns, or rough roadbeds. As railroad companies found themselves in a struggle for corporate survival, investments in routine preventative maintenance suffered. In enacting the RRR Act, as amended, Congress recognized that State, regional and local transportation agencies which have subsidized commuter service cannot be expected to bear the exclusive burden of bringing physical plant back to an acceptable level.

The New Jersey Department of Transportation has requested from the Urban Mass Transportation Administration $18 million in deferred maintenance assistance. Our original application included important investments in rolling stock, signals, and track. The projects for which we have chosen to use the available funds are of crucial importance to passenger safety and convenience and system reliability. As of this past spring, we have only been assured of receiving less than $3 million. Additional funds are expected due to a $15 million increase in the above-noted section 17 budget request wisely voted by Congress for fiscal year 1978. Because of the scarceness of local resources, it is important that the State obtain maximum use of available Federal funds. An impediment to this is UMTA's interpretation that the Federal share is dictated by the date of performance of work. This will serve to limit the size of the State's deferred maintenance program. Certain of the proposed projects involve extensive work which will take a considerable period of time to perform. Some projects will be performed by railroad work forces whose pace of activity is not under the control of public agencies.

The Federal share limitations of section 17 were originally designed to phase our emergency operating assistance. The deferred maintenance amendment was not enacted until 6 months into the program and by its nature is implemented differently from operating assistance. Thus, to strictly relate the determination of Federal share for emergency operating assistance to the deferred maintenance program is unfair. Under section 401 of this bill, the Federal share of costs of section 17 projects will be set by the date of initiation of the project. This is far more equitable to the recipient public agencies and will assure maximum leverage of scarce local resources. It also makes the determination of the Federal share in section 17 deferred maintenance comparable to improvements in the rail freight assistance programs as set forth in section 2(a) of § 1793.

I now wish to focus particularly on three aspects of § 1793 which merit our attention: Rail service continuation assistance, the Northeast corridor improvement program, and the reuse of abandoned railroad rights-of-way.

ACCELERATED MAINTENANCE

Section 2a of § 1793 extends the periods of decreasing Federal contributions to 4R title VIII rail assistance programs. In addition, this section fixes the date on which an assistance project begins as the date which determines its appropriate Federal funding period. At the least, it is only equitable that similar modification be made to the rail service continuation program contained in section 402(a) of the 3R–Act.

Beyond this, I believe that there should be an extension of the 100 percent Federal contribution for maintenance, improvements, and acquisitions in this section from March 31, 1977 to March 31, 1978. This would yield significant benefits for States attempting to maintain vital rail freight links to shippers. Assistance under this program has been subject to delays which were not a result of any action by State transportation agencies. Yet, these delays will result in New Jersey and other Northeastern States receiving a lower percentage Federal contribution. This program was impeded due to administrative procedures at the Federal Railroad Administration. Second, Conrail, faced with the

enormous task of combining several railroad systems into one, did not give high priority to the problem of light density lines. An agreement with Conrail for work under the 3R title IV program was just reached this spring. Mr. Chairman, this clearly dictates an extension of 100 percent Federal assistance for an additional year.

Under present law, work on current projects not completed by March 31 requires a local contribution. For example, this past April 1, when the local contribution rose from zero to 10 percent, we were unable to proceed with accelerated maintenance on five light density lines (at a total cost of approximately $600,000). Even though the shippers and receivers of freight on these lines were prepared to pay 10 percent of the operating subsidy, they did not feel that they should contribute 10 percent of accelerated maintenance costs to carry out improvements that the former railroad owners had failed to make over a period of years. Consequently, two Light Density Lines serving four shippers were either forced to discontinue operations or were unable to resume operations which had been shut down because of washouts that had occurred before the Conrail takeover.

We have another example in which the Imperial Oil Company is attempting to fulfill a contract with the U.S. Navy. In order to do so, a $160,000 repair must be made to the Freehold Branch of the former Central Railroad of New Jersey. Under the current law, the company or local agency must pay 10 percent of this amount and may not, in fact, be able to do so.

NORTHEAST CORRIDOR IMPROVEMENTS

The State of New Jersey strongly supports enactment of Sections 6(b) and (d) of S. 1793 which delete the 50 percent local share requirement with respect to the improvement of non-operational portions of station improvements, related facilities, and fencing in the Northeast Corridor Improvement Project.

Since the initiation of the Northeast Corridor Improvement Project, a disparity between State and Federal interests has become increasingly evident. Concepts, plans, and proposals which have been put forward by the Federal Railroad Administration call for ambitious, far-reaching, and costly improvements to designated Northeast Corridor Stations. To a significant extent, these improvements will be considered "non-operational portions of stations used in intercity rail passenger service" or related facilities (Sec. 703(1)(B)—4R Act of 1976). As stated in the Act, "Fifty percent of the cost of such improvements shall be borne by States (or local or regional transportation authorities)." The requirement for sharing costs is an issue dividing federal and State governments. It could lead to stalemate and may result in the failure of a key aspect of the Northeast Corridor Program. The State of New Jersey wants to avoid this prospect.

As a result of our concern and that of other States affected, Sen. Pell introduced S. 1598. It's provisions are currently reflected in the legislation which we are addressing today. In addition to eliminating the fifty percent local share requirement for non-operational NEC station improvements, Section 6 of S. 1793 directs the federal government to fund the entire share of such improvements by amending Section 704(a)(2) of the 4R Act to allocate $300 million instead of $150 million.

We believe this revision is fair since Amtrak owns nearly all the stations on the Corridor and therefore should be wholly responsible for financing improvements to its stations.

Apart from the financial burden imposed by the local matching share requirement, another problem concerns the differences in priorities reflected in the FRA's schematic devolpment plans for improvements to NEC stations. We have been concerned that, as a consequence, the State of New Jersey might have to justify large expenditures for station alterations to the detriment of plans for the improvement of many other long-neglected facilities. Sizable State expenditures for Northeast Corridor intercity stations, which were only recently improved with public funds and which currently provide a superior level of service cannot be funded in good conscience.

I would once again emphasize that the State of New Jersey is in full agreement with the federal government that the NECIP is a high priority program, one which is essential in terms of regional and national objectives. New Jersey supports the speedy implementation of this overall program.

Notwithstanding this issue, the statutory requirement for a local share—for the so-called non-operational improvements—must still be eliminated. If not,

NECIP improvement projects are sure to be fragmented and disrupted. The undesirable result will be that the benefits of upgraded high-speed intercity railroad service will be lost at stations not sufficiently improved to accommodate expanded needs.

REUSE OF ABANDONED RAILROAD RIGHTS OF WAY

The State of New Jersey wishes to go on record in favor of Section 6(f). New Jersey has long been aware of the excellent potential for reuse of abandoned rights of way for a multitude of public purposes.

The Division of State and Regional Planning of the New Jersey Department of Community Affairs has advocated the use of such linear open spaces to help achieve balanced land use patterns as well as to serve recreational functions. Recreational possibilities include such things as biking trails, bicycle paths, sled runs, ice skating and passive enjoyment of the terrain. Non-recreational reuses could include such things as conversion to another form of vehicular transport, utility lines routing, equipment material and storage, etc. In fact, many State agencies, as well as county and local units of government, have already exhibited a great deal of interest in acquiring all or part of fourteen of the thirty sections of abandoned railroad rights of way, now being processed through the State Review Agency. A full scale planning and acquisition program as provided by this legislation would undoubtedly spur additional interest.

The State of New Jersey, through the Division of State and Regional Planning, has already begun to organize to investigate the possibilities for participation in the proposed planning and acquisition program. In addition, the State has been actively encouraging the submission of proposals for the use of these linear tracts.

In a densely populated State such as New Jersey, it is particularly appropriate to achieve the best possible utilization of these linear open spaces. With the proper and detailed planning and coordination that this Act would provide, it may be possible, for example, to go beyond the basic provision of short distance bicycle or hiking paths and utilize certain rights of way in combination with other public lands to provide links between urban and rural areas, to connect urban areas with more rural parks or recreation areas or to provide pedestrian or bicycle access between points with urban concentration. The possibilities are clearly numerous.

In conclusion, I want to thank the committee for the opportunity to comment on these significant issues. I would also like to reiterate my support for this proposed legislation and commend the committee and the Senator from my home state, Harrison Williams, Jr., for their efforts. I would be very happy to answer any questions you might have.

Thank you.

APPENDIX

A: Proposed Amendment on Freight Traffic Interference—Section 201(b): Where the Corporation determines that additional service will result in substantial interference to existing freight service, the Corporation shall have the burden of proving that such substantial interference will occur in a proceeding before the Office, except with respect to matters over which the Operations Review Panel has jurisdiction pursuant to section 702 of the Railroad Revitalization and Regulatory Reform Act of 1976 in which case the proceeding shall be before the Panel. All decisions of the Office or Panel shall be final and binding upon the parties.

[The following information was referred to on p. 177.]

STATE OF NEW JERSEY,
DEPARTMENT OF TRANSPORTATION,
Trenton, N.J., August 10, 1977.

Senator RUSSELL LONG,
Chairman, Subcommittee on Surface Transportation, Russell Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciated the opportunity of appearing before your committee on July 29, 1977, to discuss S. 1890. At that time, I indicated that I would communicate further with the Committee concerning Section 301. The following comments reflect my concern in several areas.

1. As currently written, indemnification is contingent upon the exercise of due diligence on the part of the Corporation or the government agency in obtaining

insurance. This provision provides no guarantee for the resolution of claims. Several interrelated problems come to mind.

(*a*) Section 301 does not eliminate the contractual problems which result from the prohibitions of State law against contracting for indeterminate liability.

(*b*) It is possible that Conrail and a subsidizing agency would be forced into court to determine fault for the failure to exercise due diligence as well as for allocation of claims.

(*c*) The subsidizing agency could be forced into court to challenge the Director's decision on the exercise of due diligence.

(*d*) Waiting for a finding by the Director adds an administrative obstruction to the receipt of funds.

(*e*) A due diligence condition precedent to indemnification by USRA is workable only if standards are developed which must be met and certified prior to or coincident with the execution of a passenger service operating agreement.

2. If the Committee determines that there is a necessity for a due diligence requirement, it should be placed on one party, the Corporation. Conrail's entry into the insurance market has made it virtually impossible for government subsidizers of commuter rail service to obtain insurance. I have attached a revised version of Section 301 which places a due diligence requirement on Conrail only (Exhibit A). If Conrail continues to assert that it will not singly accept responsibility for exercising due diligence, the indemnification should be absolute and not contingent upon proof of due diligence. I have also attached an alternative version of Section 301 which accomplishes this end (Exhibit B).

3. Section 301 states that reimbursement will be forthcoming after findings by the Director of the RSPO. An "after the fact" finding could result in the State having to disburse its own funds before receipt of the USRA reimbursement. Having to expend funds defeats one of the primary reasons for indemnification: the State's inability to obligate funds beyond its appropriation. Personal injury and property damage liabilities are contingent and indeterminate and cannot be budgeted to meet a payment/reimbursement formula. I would suggest, therefore, that indemnification be made immediately.

4. Section 301 does not explicitly cover sudden depletion of casualty reserve funds. Government agencies set up such funds to cover unexpected payments within a $2 million deductible. This fund is in addition to line item payments in service contracts made by NJDOT for an expected volume of settlements. States such as New Jersey, which pay in excess of the $2 million deductible, would only be faced with a sudden depletion if there were two simultaneous claims (for a contract that covers roughly half of the State's commuter rail passenger service, a $3½ million annual casualty reserve fund payment is made. Other states share this concern. Further, states such as Indiana, which have very small rail programs, are in even more vulnerable positions with respect to this problem.

5. To assure ultimate and rapid resolution of claims, it is important that the Association be required rather than authorized to make payments.

6. Section 301(b)(2) "(j)" is not a sentence.

7. Section 301(a)(8) should not only include services provided pursuant to Section 304 of the Act but also services provided pursuant to 303(b)(2) as all 303(b)(2) as well. The Erie Lackwanna and the MTA in New York and the CTA in Conneeticut are all 308(b)(2) services which should receive protection as well.

The enclosed suggested revision of Section 301 would resolve the outstanding issues discussed above. Should you have any questions, my staff and I are available for discussion.

Very truly yours,

PETER E. STANGL,
Assistant Commissioner,
Public Transportation.

EXHIBIT A

SUGGESTED REVISION OF SECTION 301 (PLACES CONTINGENCY FOR "DUE DILIGENCE" ON CONRAIL ONLY)

SEC. 301 Catastrophic Loss Indemnification:

(a) Section 304(e) of the Regional Rail Reorganization Act of 1973 (45 USC 744(e)) is amended by adding the following new paragraph:

"(8) [If the] *Upon verification to the* Director of the Rail Services Planning Office [finds (i)] that the Corporation or a State (or a local or regional trans-

portation authority) as a result of the operation of rail passenger service required to be operated pursuant to this subsection, *or Section 303(b)(2) of this title,* has incurred liabilities for damage to persons or property which are not underwritten by private insurance carriers, [and (ii) that the Corporation or State (or local or regional transportation authority) has prior to incurring such liabilities, exercised due diligence in attempting to secure such insurance, the Corporation or the State (or local or regional transportation authority)] *the State (or local or regional transportation authority)* shall be entitled to [reimbursement] *indemnification* pursuant to section 211 (j) of this Act in an amount required for full payment of such liabilities *and costs. If the Corporation incurs such liabilities, it shall be entitled to reimbursement upon a finding by the Director that it has, prior to incurring such liabilities, exercised due diligence in attempting to secure such insurance. Claims for reimbursement shall be in accordance with regulations promulgated by the Office pursuant to this subsection. The Director shall review all claims within 14 days of receipt, and promptly forward to USRA all certified claims.*"

(b) Section 211 of the Regional Rail Reorganization Act of [1975] *1973* (45 USC 741) is amended:

(1) By inserting in subsection (a) thereof, following the phrase "as it shall prescribe," the words "to indemnify the Corporation or a State (or a local or regional transportation authority) for rail passenger casualty losses as provided in section 304(e)(8) of this Act"; and

(2) By adding the following new subsection:

"(j) The Association, [is authorized] upon being notified in writing of a finding of the Director of the Rail Services Planning Office pursuant to section 304(e)(8) of this Act [and] of a claim for casualty loss indemnification by the Corporation or a State (or local or regional transportation authority), *within 14 days of such notification shall make payment to the Corporation or State (or local or regional transportation authority)* for such losses in amounts not to exceed for any one casualty occurrence $50,000,000 in excess of privately underwritten losses [in accordance with procedures established by the Association."] *or an established casualty reserve fund of such State (or local or regional transportation authority).*"

(c) Section 210(b) of the Regional Rail Reorganization Act of [1975] *1973* (45 USC 74(b)) is amended:

(1) By striking the number "395,000,000" and inserting in lieu thereof the number "495,000,000;"

(2) By striking the word "and" in paragraph (1) thereof; by striking the period at the end of the paragraph (2) thereof and by inserting "and:" in lieu thereof; and

(3) By adding the following new paragraph:

"(3) to idemnify liabilities incurred by the Corporation or a State (or local or regional transportation authority) in the manner prescribed in section 304(e) of this Act."

EXHIBIT B

SUGGESTED REVISION OF SECTION 301 (ELIMINATES CONTINGENCY FOR "DUE DILIGENCE")

Sec. 301 Catastrophic Loss Indemnification:

(a) Section 304(e) of the Regional Rail Reorganization Act of 1973 (45 USC 744(e)) is amended by adding the following new paragraph:

"(8) [If the] *Upon verification to the* Director of the Rail Services Planning Office [finds (i)] that the Corporation or a State (or a local or regional transportation authority) as a result of the operation of rail passenger service required to be operated pursuant to this subsection, *or Section 303(b)(2) of this title,* has incurred liabilities for damage to persons or property which are not underwritten by private insurance carriers, [and (ii) that the Corporation or State (or local or regional transportation authority) has, prior to incurring such liabilities, exercised due diligence in attempting to secure insurance, the Corporation or the State (or local or regional transportation authority)] *the Corporation or State (or local regional transportation authority)* shall be entitled to [reimbursement] *indemnification* pursuant to section 211(j) of this Act in an amount required for full payment of such liabilities *and costs. Claims for reimbursement shall be in accordance with regulations promulgated by the Office pursuant to this subsection. The Director shall review all claims within 14 days of receipt, and promptly forward to USRA all certified claims.*"

(b) Section 211 of the Regional Rail Reorganization Act of [1975] *1973* (45 USC 741) is amended:

(1) By inserting in subsection (a) thereof, following the phrase "as it shall prescribe," the words "to indemnify the Corporation or a State (or a local or regional transportation authority) for rail passenger casualty losses as provided in section 304(e)(8) of this Act";

(2) By adding the following new subsection:

"(j) The Association, [is authorized] upon being notified in writing of a finding of the Director of the Rail Services Planning Office pursuant to section 304(e)(8) of this Act [and] of a claim for casualty loss indemnification by the Corporation or a State (or local or regional transportation authority), *within 14 days of such notification shall make payment to the Corporation or State (or local or regional transportation authority)* for such losses in amounts not to exceed for any one casualty occurrence $50,000,000 in excess of privately underwritten losses [in accordance with procedures established by the Association."] *or an established casualty reserve fund of such State (or local or regional transportation authority)."*

(c) Section 210 (b) of the Regional Rail Reorganization Act of [1975] *1973* (45 USC 74(b)) is amended:

(1) By striking the number "395,000,000" and inserting in lieu thereof the number "495,000,000;"

(2) By striking the word "and" in paragraph (1) thereof; by striking the period at the end of the paragraph (2) thereof and by inserting ": and" in lieu thereof; and

(3) to indemnify liabilities incurred by the Corporation or a State (or local or regional transportation authority) in the manner prescribed in section 304(e) of this Act."

Senator DURKIN. We have questions. Time will not permit them. We will send you the questions and we would appreciate it if you would respond in writing and the record will be left open. And I do want to thank you and I apologize for the time constraints. This place is a zoo in many respects.

Thank you very much.

Mr. ELKINS. We appreciate the opportunity, Senator, and we will get our answers to you promptly. Again, we do appreciate your time and the committee's time in realizing that the congressional action is necessary to solve these various problems of the States and industries.

Senator DURKIN. I apologize on behalf of the committee. To have a distinguished panel, such as this, and then have to get the questions and answers in writing, it is asinine. And I do apologize for the way the system functions in that respect, the way our system functions. It is generous to call it a system at times.

Thank you very, very much.

Senator DURKIN. Mr. Mahoney.

Mr. Mahoney, I want you to get started. I have to go vote. We have the cloture vote on now for public financing. You can start. Your full statement will be printed in the record, and then if you should conclude before I get back—is Mr. Gavin here? You can proceed.

Mr. Mahoney, do you represent the labor group?

STATEMENT OF WILLIAM G. MAHONEY, COUNSEL, RAILWAY LABOR EXECUTIVES ASSOCIATION; ACCOMPANIED BY J. R. SNYDER, NATIONAL LEGISLATION DIRECTOR, UNITED TRANSPORTATION UNION

Mr. MAHONEY. I'm accompanied by J. R. Snyder, national legislative director of the United Transportation Union.

Senator DURKIN. How does a labor group end up with the executives and the management has the opposite title?

Mr. MAHONEY. The railroad industry was never noted for clarity or precision. But that is the way it has been for years. They are the chief executives of the various unions.

Senator, I have a short statement which will take about 2 minutes. I made notes which I would like to elaborate on a bit.

My name is William G. Mahoney and I am a partner in the law firm of Highsaw, Mahoney & Friedman with offices in Washington, D.C. I appear before you today on behalf of the Railways Labor Executives' Association, an association of chief executive officers of all of the standard national and international railway labor unions representing virtually all of the railroad employees in the United States. The unions whose chief executives belong to the RLEA are as follows:

American Railway Supervisors' Association;
American Train Dispatchers' Association;
Brotherhood of Locomotive Engineers;
Brotherhood of Maintenance of Way Employees;
Brotherhood of Railroad Signalmen;
Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees;
Brotherhood of Railway Carmen of the United States and Canada;
Brotherhood of Sleeping Car Porters;
Hotel & Restaurant Employees and Bartenders International Union;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers;
International Brotherhood of Electrical Workers;
International Brotherhood of Firemen & Oilers;
International Organization of Masters, Mates & Pilots of America;
National Marine Engineers' Beneficial Association;
Railroad Yardmasters of America;
Railway Employees' Dept., AFL–CIO;
Seafarers' International Union of North America;
Sheet Metal Workers' International Association;
Transport Workers Union of America; and
United Transportation Union.

I appear before you today to present the views of the members of the RLEA with regard to S. 1793 and the operation and effect of the local rail assistance program.

As you know, titles III and IV of the Regional Rail Reorganization Act were designed and enacted as the result of the imminent threat of economic catastrophe in the Northeastern United States—to be followed by similar effects throughout the country—brought about by the collapse of the Penn Central merger. It was emergency legislation. It was innovative in nature and, to a large extent, experimental legislation.

Parts of the statute have been implemented effectively and have enabled rail service in the Northeast to begin to rebound from what had been an almost hopeless operational as well as financial situation.

We recognize that the present law as it applies to ConRail may need modification from time to time. S. 1793 appears to be an attempt at such modification. It is an attempt with which we have considerable difficulty and which, in its present form, we must oppose.

Section 2 (c) and (f) of the bill provide for automatic, summary abandonment of lines of railroad failing establishment of a subsidy operation under the statute. We believe that such abandonments would not be in the short-term interest of those using the line or in the long-term interest of ConRail or the Nation as a whole.

Perhaps there is a need to revamp the abandonment program of the 3–R Act; if so, the rail labor unions would be most willing to cooperate in seeking constructive legislation to that end. However, we do not believe the answer to that problem, if it exists, is to be found in S. 1793. We are working with the representatives of ConRail at the present time on this problem and will submit language for your consideration after the upcoming recess.

The local rail assistance program in the Northeast and Midwest has resulted in the creation of numerous short line railroad operations, particularly in the States of Indiana, Pennsylvania, Michigan, Maryland, and New York. A major problem with these operations is that they are performed under special "designated operator" certificates issued by the ICC.

In March 1976, the Commission decided it was too much trouble to require "designated operators" to meet the requirements of a certificate of public convenience and necessity to operate a railroad and provided virtual instant authority to operate the short line segments as designated operators.

One of the great problems presented by this situation is the uncertainty of the continued existence of any particular short line. Presumably the "designated operator" can cease operations as summarily as he began them.

The railway labor organizations are convinced that the 3–R plan should not be extended throughout the United States. There are several reasons for this:

First, unlike the situation in the Northeast, there is no similar railroad emergency in the Nation generally;

Second, many States would be virtually stripped of effective rail service in summary fashion;

Third, the protection available to employees to counter in some part the effects of the Northeast abandonment program are not present in the Railroad Revitalization and Regulatory Reform Act of 1976—and, indeed, present indications are that the Commission will join with railroad managements in providing the employees with effectively less protection than provided by Congress in the 4–R Act, which means months or years of litigation during which the employees will not be protected.

We have a recent example of that. Yesterday the Commission put out an order in an amendment case in which they, in our opinion, completely misapplied the protective provisions of the 4–R Act.

Fourth, and finally, the present and continuing crisis the world faces in the diminution of fossil fuel reserves makes imperative the preservation, where at all possible, of the most fuel efficient mode of transport available today or in the foreseeable future—railroad transportation. Destruction of this means of serving most of the areas of this country by rail at this time within full view of this fuel crisis would, we respectfully submit, be irresponsible in the extreme. A way must be found to preserve the rail network since it must eventually be restored to its position as our primary means of transportation.

Thank you.

I might say I was shocked by the statement made by the FRA that the 4–R Act is in effect nothing but a bridge to abandonment of branch line railroads in the United States. That was the view of the previous administration of this country. That was what they wanted in the 4–R Act, and they attempted to get it in the 4–R Act and they failed. It seems to be put forth by the present administration in light of Mr. Sullivan's statement.

The Railroad Labor Executives' Association supports the extension of 100-percent subsidy for branch lines such as is contained in the bill pending before the House H.R. 8393.

If I might, I would like to submit the testimony which I presented day before yesterday in support of that bill, much of which parallels the testimony I gave today but which expands on certain aspects of the abandonment provisions of the present core.

Mr. ASHINOFF. The next witness is Mr. Henry Gavan, representing Osborn Elliott, deputy mayor for economic affairs, city of New York.

STATEMENT OF HENRY J. GAVAN, REPRESENTING OSBORN ELLIOTT, DEPUTY MAYOR FOR ECONOMIC AFFAIRS, CITY OF NEW YORK

Mr. GAVAN. Thank you and my thanks to the Senator for his assistance and your assistance and to the balance of the staff, for enabling us to make this statement.

Mr. ASHINOFF. Your full statement will be submitted in the record. You can proceed in any manner you see comfortable.

Mr. GAVAN. Keeping that in mind and in the interest of saving time I will synopsize what is, even as it stands now, a relatively brief statement.

I wish to comment on some of the remarks I have heard here this morning, particularly those from Mr. Rossi and from the New Jersey State Department of Transportation.

We are greatly concerned about what has now developed as the specter of a ConRail monopoly in the Northeast, particularly as it affects the city of New York and the Port of New York. We are concerned about this monopoly because it appears to us as far as the interests of the port and the interests of the city are concerned that this is not a benevolent monopoly. Many instances have been called to our attention over the past year of activities of ConRail employees, continuing a trend that had started when it was at Penn Central, of inducing shippers located in the city of New York to locate to other places, inducing them by low rentals or no rentals to make these moves.

Frankly, we are tremendously disturbed by that type of activity. We think it is a most improper use of the Federal funds involved in it and we call that to your particular attention.

On the question of lack of competition, as the committee is well aware, when the final system plan was formulated, it was anticipated that the Chessie system would come in and offer the type of viable competition that everyone agreed was needed. We all know the Chessie system dropped out of the plan.

The department of transportation, State of New Jersey, offered a modest alternative to that recently by asking extensions of service on the Delaware and Hudson.

The Secretary of Transportation in June of this year saw fit to reject that request under section 305 of the 3–R Act. The reasoning expressed in his letter is most disturbing in that it indicates a future of ConRail monopoly. It is clear to us in reading his response that it is his impression and his opinion that the public is best served by increasing the monopoly of ConRail and not by permitting the Delaware and Hudson to offer this minimal alternative service. It would appear now that this is the only realistic and viable alternative service that is available. And without that, we shall be at the mercy of ConRail and without kicking a dead horse, as testimony elicited earlier today will indicate, and from our experience, that is not a pleasant prospect to behold.

We appreciate any efforts that the Senator and committee could make in reenforcing what we believe to have been the congressional mandate that an alternative to ConRail be offered to the people of the Northeast and that particular activities of ConRail are antagonistic to the interests of one city or one locality, be called to their attention and be terminated.

Thank you very much.

[The statement follows:]

STATEMENT OF OSBORN ELLIOTT, DEPUTY MAYOR OF THE CITY OF NEW YORK

Mr. Chairman, on behalf of the City of New York, I welcome these oversight hearings on the Rail Revitalization and Regulatory Reform Act of 1976 ("the 4R Act") which approved the USRA Final System Plan formulated under the Regional Rail Reorganization Act of 1973 ("the 3R Act").

These hearings provide an opportunity for this Committee to consider the failure of USRA and Department of Transportation to achieve in practice several of the stated goals of the 3R Act including the preservation of competition and the preservation of profitable existing patterns of service by rail in the Northeast Region.

As a result, the New York Metropolitan area and, for that matter the New England States, face the prospect of dependence on one railroad, ConRail, for essential rail service.

As the Committee will remember, the USRA Preliminary System Plan was severely criticized because of its failure to provide for competitive rail service; in particular, with respect to the City and Port of New York. The five public agencies concerned—the New York and New Jersey State Departments of Transportation, the City of New York, the Tri-State Regional Planning Commission, and the Port Authority of New York and New Jersey—joined in a report in May 1975 which concluded (p. 6) "the need for truly competitive railroad service is of overwhelming importance to the New York-New Jersey region" with its population of over 16 million, the largest consuming area in the United States (p. 5)." (A copy of this Joint Agency Committee report, as it is commonly called, is attached as Appendix A.)

This goal of competitive rail service appeared to be in sight when the Chessie System announced its interest in acquiring properties of the bankrupts in order to serve the region. The USRA Final System Plan of July 1975, was predicated on the prospect of competitive service by Chessie, and at one point, USRA slashed

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NOTE: Parenthetically USRA has demonstrated this reluctance to permit full pledged and genuine competition to ConRail on other occasions. As one illustration: after an extensive study was completed for the New England Regional Commission, which revealed the enormous potential made possible by channeling Southern New England traffic via the cross New York harbor route, NERCOM requested a detailed analysis of this recommended cross-harbor route. In spite of the manifold benefits to parts of New York State and all of Southern New England, the USRA categorically refused to participate in any such study, using specious reasoning to justify an irresponsible decision.

the price of the properties involved because of the importance USRA attached to Chessie's entry into the Northeast region.

When the Chessie System ultimately dropped out *after* the Congress had approved the Final System Plan by the 4R Act, despite strenuous efforts to obtain its participation, much of the region was bereft of effective rail competition to ConRail on the conveyance date, April 1, 1976. Alternatives suggested before the seeming advent of Chessie—the Marc-El proposal, for example—were then dismissed by USRA as impracticable. Accordingly, the largest metropolis in the Country must now depend solely on ConRail for rail service.

A fig-leaf of competition was attempted by permitting service by Delaware and Hudson Railway Company ("the D&H") eastward to the Oak Island Yard in Newark, New Jersey. The D&H, however, was restricted by USRA to COFC and TOFC traffic and was not given trackage rights into Greenville, New Jersey which would have created competitive rail service to the City and Port. The D&H has reported operating losses of around $250,000 per month in providing this service, and the D&H is now attempting, at USRA's insistance to withdraw from this service.

On September 23, 1976, the New Jersey State Department of Transportation and the Port Authority of New York and New Jersey requested the Secretary of Transportation and the Board of Directors of USRA approve a supplemental transaction under Section 305 of the 3R Act, as amended by the 4R Act, which would remove the restrictions placed on the D&H by USRA and give it access to additional markets in the New York and New Jersey Metropolitan area and the Port of New York, including:

(1) the Greenville Yard—a stone's throw away from the Oak Island Yard which the D&H serves,

(2) the so-called "Chemical Coast" on the New Jersey shore of the Port of New York and Port Newark/Elizabeth Marine Terminal of the Port Authority.

A glance on the map which follows page 12 of the Joint Agency Committee Report, (Appendix A) shows that by leasing very short extensions of existing trackage and switching rights, the D&H would have access to the Port of New York, and the market it offers with the prospect of providing effective competition to ConRail.

Unfortunately, by letter dated, June 22, 1977, the Secretary of Transportation rejected the proposed supplemental transaction on grounds which would make impossible, as a practicable matter, any future competitive rail service to the City and Port of New York.

While one must be diffident in taking issue with the distinguished Secretary of Transportation whose expertise in this field is well known, I submit, with all due deference, that his reasoning was fatally flawed.

Thus, the Secretary stated that as a prerequisite for gaining the modest trackage rights sought by any railroad that wishes to assume the role accorded the Chessie under the Final System Plan that railroad must be willing to make a final commitment equivalent to that offered by the Chessie. However, there has been no proposal that the D&H "assume the role accorded the Chessie under the Final System Plan": rather, the proposal was to give the D&H access to the market in the New York/New Jersey Metropolitan area and its Port by a modest extension of its trackage rights. Moreover, a requirement that the D&H and the proponent "make a final commitment equivalent to that offered by the Chessie" is impossible as a practicable matter and would rule out any possibility of competitive rail service to the largest metropolis in the nation.

The Secretary also based his denial of the proposed supplemental transaction on the ground that ConRail's "traffic base would be eroded". As a matter of unhappy fact, there has been precious little traffic to erode as the result of massive diversion from the port of New York since ConRail took over, and the proposed transaction was advanced to restore and expand that traffic base. Moreover, if any loss of traffic by ConRail is the only justification to defeat a supplemental transaction, ConRail's virtual monopoly of rail transport throughout the region will go unchallenged, the goal of preserving rail competition in the region identified in the 3R Act will be frustrated, and Section 305 authorizing supplemental transaction will be a dead letter, except as a given proposal may benefit ConRail.

The Secretary also relies on USRA failure, in the Final System Plan of July 1975, to give the D. & H. trackage rights to the Northeastern New Jersey market. The USRA did not have before it then the massive diversion of rail traffic from the New York metropolitan area which has occurred since the conveyance date, April 1, 1976.

Finally, the Secretary would postpone any supplemental transaction "except under extraordinary circumstances" to await further operating experience by ConRail. By this standard, it will be too late to prepare supplemental transactions, and ConRail will have cemented its monopolistic grip on rail transport in the region.

ConRail has engaged in a variety of other actions which dramatically illustrate its ability even at this time to act as an unchallenged monopolistic enterprise. There has been a significant erosion of post-ConRail rail freight traffic. For example, transharbor carfloat operations have dwindled drastically over the past two years. In the Preliminary System Plan, USRA found (Vol. II, p. 362): "that cross-harbor carload volumes handled by Penn Central. Erie Lackawanna, Lehigh Valley, New York Dock Railway, Brooklyn Eastern District Terminal in the 1973, 1974 years approximated 83,000 cars annually. By 1976 cross-harbor carload volumes declined to 20,000 cars notwithstanding the fact that New York Dock Railway and Brooklyn Eastern District Terminal pursuant to recommendations of the USRA Final System Plan (Vol. I., p. 11 and Vol. II, p. 10) extended their service to the entire Port so as to handle the traffic formerly floated by the bankrupts. Undoubtedly, the national recession and New York City's financial crisis are in part responsible for the reduction in annual carload volumes. Rerouting of former Erie Lackawanna floating traffic, approximately 18,000 cars per year, to Selkirk, New York had also contributed to the decline. At least as, if not more important than the preceding factors in ConRail's diversion of import/export traffic away from the Port of New York to other ports.

By continuing the practice initiated by Penn Central of relocating rail shippers, freight forwarders and cargo consolidators to ConRail sidings outside New York City. ConRail is contributing to the economic decline of New York City.

Even as I speak to you now ConRail is "urging" a number of freight forwarders in New York City to so relocate. Further at this very moment ConRail is offering a variety of enticements to industries in New York City in urging them to leave the City and locate on a ConRail siding in New Jersey or elsewhere.

In addition, ConRail has attempted to upset the Congressionally mandated port parity by its proposal to the Interstate Commerce Commission in the fall of 1976 to alter the existing rate structure in a manner whcih would have severely discriminated against the New York side of the Port. Vociferous protests by affected concerns succeeded in causing ConRail to withdraw its proposals.

But to attract and keep the business and jobs needed to restore our City, we must have adequate rail service. Since we are not getting it from ConRail alone, I urge the Committee to find a way, by legislation or by persuasion, to enable the D. & H. to extend its service to the New York/New Jersey Metropolitan area in accordance with the proposed supplemental transaction which the Secretary of Transportation rejected.

If the Committee concludes that new legislation is necessary we would be delighted to consult with the Committee's staff to frame appropriate language to this end for the Committee to consider.

Mr. Chairman, I cannot stress the importance of this proposal to the preservation and recovery of the City and Port of New York.

Thank you for this opportunity to be heard.

Mr. FREEMAN. I'm Richard Freeman, speaking on behalf of the Association of American Railroads.

STATEMENT OF RICHARD M. FREEMAN, VICE PRESIDENT—LAW, CHICAGO & NORTHWESTERN TRANSPORTATION CO., REPRESENTING THE ASSOCIATION OF AMERICAN RAILROADS; ACCOMPANIED BY PHILIP F. WELSH, GENERAL SOLICITOR, ASSOCIATION OF AMERICAN RAILROADS

Mr. FREEMAN. I ask to submit my supplemental statement, if I may. I have a statement, which I will put in the record and I wish to supplement it. I will not take the time of the committee this morning.

If the staff or Senator have questions raised by the statement I would be delighted to respond to those questions if you put them to me.

[The statement follows:]

STATEMENT OF RICHARD M. FREEMAN, IN BEHALF OF THE ASSOCIATION OF AMERICAN RAILROADS

My name is Richard M. Freeman. My business address is 400 West Madison Street, Chicago, Illinois 60606. I am Vice President-Law of the Chicago and North Western Transportation Company (CNW). I appear today in behalf of the member lines of the Association of American Railroads (AAR) with headquarters in Washington, D.C., in my role as Chairman of the Association's Rail Services Group. The railroads which are members of this Association operate 96 percent of the trackage, employ 94 percent of the workers, and produce 97 percent of the freight revenues of all railroads in the United States. My employee-owned company, which is a member of the Association, currently operates 9,851 miles of railroad, and has 962 miles pending before the Interstate Commerce Commission (ICC) for abandonment, 984 miles listed in ICC Category 1 (lines subject to abandonment within three years) and 313 miles listed in ICC Category 2 (lines potentially subject to abandonment).

There are a number of proposals which have been made over the last several months to change the federal assistance program applicable to branch lines. Some of these proposals are embodied in S. 1793; others are found in several House bills. After giving consideration to these proposals, the Association of American Railroad is pleased to have an opportunity to state the rail industry's views.

It is our understanding that the purpose of the federal five-year branch line assistance program was to cushion any effects of branch line abandonment or service discontinuance on local communities and shippers. The general approach was to provide a declining level of federal assistance from 100% to 70% over the five-year period for branch lines which the Interstate Commerce Commission had authorized for abandonment or discontinuance. The assistance for a branch line could be either (1) in the form of payments to the railroad to make up the difference between revenues and avoidable costs plus a reasonable return, to rehabilitate the line, or to purchase the line; or (2) in the form of payments to those adversely affected for easing the costs of lost service in a manner less expensive than continuing rail service. The legislative changes suggested in the program have dealt with the former—that is, payments to railroads—and have not dealt with the latter alternative. We have been disappointed that the Department of Transportation has not encouraged the approach of payments to communities and shippers to ease the loss of rail service where that is a cost effective approach.

Many of the proposed changes involve matters of interest primarily to the states and, while we find the proposals reasonable, we believe that the rail industry has neither adequate knowledge nor expertise to express an opinion useful to this subcommittee. In this category are proposals to modify the timing of the reduction in the federal share of rail assistance costs to match the federal fiscal year, permit states to carry over in-kind benefits, change the allocation of federal funds among the states, give discretion to the states to determine which projects should be federally financed, and increase the monies assigned for planning and lengthen the period during which those monies are available (S. 1973, Sec. 2 (a), (b), (e) and (g)).

There are substantive proposals, however, in which we believe this subcommittee may wish to hear from our industry.

One proposal would make federal funds available in the form of payments for operating assistance for lines which are before the Commission for abandonment or which have been designated by the railroads as abandonment candidates, rather than as under the present law, only for lines which have been authorized for abandonment. The existing provision has a salutary effect on all parties, including the governmental agencies. Since federal subsidy monies cannot be made available until the Commission has authorized abandonment, everyone involved has an incentive to expedite the decision-making process. We are reluctant to see that incentive removed, given the inherently slow pace of that process. If the decision-making process is properly expedited, there is little or no need to provide the interim operating financial assistance, pending the decision. Accordingly, we oppose this change.

There is a proposed amendment in S. 1793 which would make federal assistance available only for rehabilitation in the case of lines which are abandonment candidates, but which have not yet been authorized for abandonment (Sec. 2(d)). The rail industry is studying the implications of this amendment, and

would like an opportunity to express its views on this proposed change at a subsequent time, either by additional testimony or written communication to the subcommittee.

There is another proposed amendment in S. 1793 which apparently is designed to expedite the abandonment process by providing that if a railroad does not receive an offer of financial assistance equal to 90 percent of the difference between revenues and avoidable costs for a line and reasonable return, or if a payment for such assistance is not made when due, then the Interstate Commerce Commission must authorize abandonment, upon application, within thirty days of such failure (Sec. 2(f) and Sec. 5(a)). While we concur in the objectives of the provision to expedite the painfully slow abandonment process, we would be more comfortable with such a provision if it were amended to cover 100 percent of the loss on a line. I would like to suggest that another approach to the same problem—the slow abandonment process and the large losses incurred by the railroads during the lengthy government processes to determine whether those losses should be avoided by abandonment or by financial assistance—would be a direction by the Congress to the Interstate Commerce Commission to complete its processing expeditiously.

There is a proposal to provide financial assistance for a line as to which the Interstate Commerce Commission has concluded that the public interest and necessity does not permit abandonment, but the line is losing money. Financial assistance would cover both operating deficients and rehabilitation expenses, with the federal contribution to such assistance beginning at 100 percent and declining annually to 60 percent over 5 years. With this understanding, we support the concept. It would avoid cross subsidization and thus cure the basic inequity of requiring other shippers using rail service over the balance of the carrier's system to make up deficits on lines of railroads which do not pay their way.

Another proposal would permit the Interstate Commerce Commission to authorize another railroad the right to operate over an abandoned line and over other lines of the abandoning railroad. Such a provision would encourage the establishment of short lines which could operate not only over the abandoned lines, but over other lines of the abandoning railroad. There is no public need for short lines to operate over other lines of a trunk-line railroad. On the contrary, such operations could only create substantial operating confusion which would not serve the public interest. For good reason, the Congress has heretofore refrained from giving this power to the Commission, except in limited terminal and related areas where that power could facilitate coordination of operations (Sec. 3(5) of the Interstate Commerce Act). The proposal here would not serve to facilitate efficient service; rather it would cause interference with efficient service. For this reason, we oppose this proposal.

Finally, the rail industry believes that the regulations of the Interstate Commerce Commission designed to implement the abandonment provisions of the 4–R Act are not consistent with the provisions of the 4–R Act. The adversely affected railroads have brought an action in the U.S. Court of Appeals for the Seventh Circuit to have the offending regulations set aside. It is inappropriate, however, to bring those issues before this subcommittee until the courts have had an opportunity to rule on those issues.

Supplemental Statement

My name is Richard M. Freeman. I filed a statement for the hearings on July 29, 1977 in behalf of the Association of American Railroads. The purpose of this statement is to respond to some of the comments made by witnesses at the July 29 hearings.

There are a number of misconceptions about railroad branch lines and the abandonment policies of the railroads. We believe it is important that these misconceptions be corrected so that the Congress will have an accurate factual foundation for any action it takes in connection with branch line abandonments.

One is that railroads wish to eliminate all or most branch line operations. That is not the case. The railroads seek only to abandon the branch lines that serve no real purpose today—that is, they seek to prune the dead branches from the tree to strengthen both the trunk and the remaining branches. The Chicago and North Western Transportation Company is a good example of the plans of a railroad which has an aggressive abandonment program. At the completion of its program to abandon about 2,250 miles of branch lines, the Chicago and North

Western will still have approximately 4,500 branch line miles, in addition to its 3,000 main line miles.

A second misconception is that railroad branch line operations are more energy efficient than truck operations. In many cases, that is not the case. While the railroads are always more efficient than trucks in handling heavy goods over long distances, the railroads cannot handle the movement of small numbers of cars behind a locomotive—that is, the local branch line collection and distribution function—as fuel efficiently as the motor carriers.

Another misconception is that branch line abandonments are inconsistent with railroad growth and the future energy demands of this country. Quite the contrary. In most instances, the ability to eliminate little used branch lines promotes expansion of the rail plant. Let me illustrate. By eliminating a seldom used grain hauling line that serves country elevators (most about as old and inefficient as the rail line serving them), the railroad can reduce rates on the adjacent main line for multiple-car movements of grain (in 25–50 and 75-car sections) from subterminal elevators. Thus, farm trucks or contract trucks will bring the grain to the subterminal elevator on the main line, a job the truck does better than the railroad, and the railroad will handle the grain to major markets or ports for export, a job the railroad does better than the truck. The result is faster and cheaper total transportation. Equally important, it also represents opportunities for growth in rail transportation. Indeed, we in the railroad industry believe that if our industry is to meet the transport challenges ahead we must modernize in this way.

Looking ahead to an economy utilizing coal rather than oil and gas, elimination of many branch lines is entirely consistent with the nation's objectives. The railroads have the capability for great expansion, clearly more than enough capacity to handle the projected increases in coal consumption. The branch line abandonment program will not interfere with that capacity. At the origin end, the railroads do not propose to abandon lines into coal fields, except where the fields are mined out. At the consumption end, branch lines do not (and cannot) serve the large utility plants, and are not efficient in serving the much smaller nonutility consumers who may be converting to coal. Those consumers will be most effectively served by truck out of coal storage concentration points.

Another misconception is that independent short line railroads can do the job cheaper than the existing railroads. Unless the short line operators are nonunion operators, that cannot be true. Indeed, in many ways they are inherently less efficient; but more important, they serve only to perpetuate, out of tax dollars, the fuel and other inefficiencies of seldom used rail branch lines.

Finally, there is the misconception that a community will die if it loses its railroad. Iowa State University conducted a post audit of communities which lost their only railroad and found that there was no measurable impact on the economy of those communities when compared with similar control group communities which still had a railroad. Of course, there is a good reason for this finding; and that is, the community losing its railroad had long before left the railroad for the motor carrier and used the railroad only for standby service, or as a bargaining chip in dealing with motor carriers.

In my initial statement, I indicated that the rail industry was still reviewing the proposed amendment in S. 1793 which would make federal assistance available for rehabilitation in the case of lines which are abandonment candidates but which have not yet been authorized for abandonment (Sec. 2(d)). I must now report that the railroad industry takes no position on this provision.

I should like to reiterate that we vigorously oppose the proposal to permit the ICC to authorize another railroad or a state the right to operate over other lines of the abandoning railroad. There is no need for giving another railroad or a state the right to operate over segments of the railroad system which are not abandoned. Such operations could only create substantial operating confusion which would not serve the public interest.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

THE SECRETARY OF TRANSPORTATION,
Washington, D.C. July 1, 1977.

Hon. WALTER D. HUDDLESTON,
U.S. Senate, Washington, D.C.

DEAR SENATOR HUDDLESTON: This is in response to your recent inquiry regarding the implementation of Section 803 of the Railroad Revitalization and Regulatory Reform Act of 1976 (RRRR Act). All states eligible under Section 803 of the RRRR Act submitted applications for planning funds. However, on May 20, 1977, the State of Alaska withdrew its application on its own accord.

As of this date, all applications for planning assistance which have been submitted to the Federal Railroad Administration have been approved. The details of each individual State grant are included in the enclosed table.

If you should have any further questions regarding this matter, please do not hesitate to contact the Office of State Assistance Programs at 202/426-1567.

Sincerely,

BROCK ADAMS.

Enclosure.

PLANNING APPLICATION/APPROVAL STATUS REPORT

State	Approved by FRA Administrator	Original received	Funds received	Date for completion of plan
Alabama	Apr. 29, 1977	Mar. 7, 1977	383,490	July 1, 1978
Alaska	Withdrew application	Mar. 11, 1977	0	---- ----
Arizona	Mar. 3, 1977	Nov. 16, 1976	100,000	July 1, 1977
Arkansas	Apr. 29, 1977	Feb. 1, 1977	244,552	July 1, 1978
California	do	Feb. 28, 1977	232,262	Oct. 1, 1978
Colorado	do	do	100,000	Oct. 1, 1977
Florida [1]	Feb. 22, 1977 (May 30, 1977)	Oct. 5, 1976	370,835	July 1, 1979
Georgia	Feb. 24, 1977	Sept. 15, 1976	65,212	July 1, 1977
Idaho	Apr. 29, 1977	Nov. 15, 1976	44,000	Dec. 31, 1977
Iowa	May 30, 1977	Dec. 1, 1976	1,189,320	Oct. 1, 1977
Kansas	Mar. 1, 1977	Jan. 31, 1977	245,991	Jan. 1, 1979
Kentucky	Apr. 29, 1977	Mar. 8, 1977	170,156	July, 1, 1978
Louisiana	do	Feb. 24, 1977	443,221	Apr. 1, 1978
Minnesota [1]	Apr. 29, 1977 (Jan. 13, 1977)	Sept. 1, 1976	556,000	Oct. 31, 1977
Mississippi	Apr. 29, 1977	Feb. 11, 1977	182,400	June 30, 1978
Missouri	do	Jan. 31, 1977	100,000	Apr. 1, 1978
Montana	do	Feb. 1, 1977	100,000	Oct. 1, 1977
Nebraska	May 30, 1977	Feb. 22, 1977	372,550	Sept. 1, 1978
Nevada	Apr. 29, 1977	Feb. 24, 1977	100,000	Apr. 1, 1978
New Mexico	do	do	152,219	July 1, 1978
North Carolina	do	Feb. 25, 1977	127,614	Apr. 1, 1978
North Dakota	do	Dec. 5, 1976	107,198	June 1, 1978
Oklahoma	Feb. 22, 1977	Dec. 16, 1976	196,800	Nov. 30, 1977
Oregon	Apr. 29, 1977	Mar. 2, 1977	186,960	July 1, 1978
South Carolina	do	Mar. 3, 1977	100,000	Oct. 1, 1977
South Dakota	do	Dec. 16, 1976	100,000	Aug. 31, 1977
Tennessee [1]	Apr. 29, 1977 (Feb. 2, 1977)	Nov. 15, 1976	120,428	July 1, 1978
Texas	May 12, 1977	Feb. 25, 1977	1,363,000	July 1, 1979
Utah	Apr. 29, 1977	Feb. 24, 1977	100,000	Apr. 1, 1978
Washington	do	Jan. 19, 1977	164,732	Jan. 1, 1979
Wisconsin	do	Mar. 22, 1977	100,000	Sept. 30, 1977
Wyoming	do	Feb. 13, 1977	100,000	July 1, 1978

[1] These States have had their original grants amended.

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE,
Stamford, Conn., July 28, 1977.

Hon. RUSSELL LONG,
Chairman, Senate Commerce, Science and Transportation Committee's Subcommittee on Surface Transportation, Washington, D.C.

DEAR CHAIRMAN LONG: The National Industrial Traffic League submits this statement for the record of hearings on the effectiveness and problems of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94-210.

The League is a voluntary organization of 1,800 shippers. shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all type of commodities. The League is not a panel or committee of a trade group, or a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its seventy years of existence, League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

The National Industrial Traffic League was an active participant in the House and Senate hearings regarding the 4R Act and presented testimony in support of regulatory reform for our nation's railroads. Additionally, the League presented testimony at the House hearings regarding Public Law 94–555, the Rail Transportation Improvement Act or so-called "Son of Conrail" bill.

The League believes the proceedings and studies mandated under Public Law 94–210 and Public Law 94–555 need to be utilized to their fullest extent and all statutory deadlines exhausted before Congress amends the acts in any substantial way. Additionally, adequate time must be allowed to observe what effects result from the many guidelines stemming from the 4R Act proceedings. The 94th Congress and the Federal Government have provided our nation's railroads with a valuable vehicle in revitalization and regulatory reform. The League strongly urges Congress to make no amendments to Section 202 of the 4R Act, Railroad Ratemaking, until the nation's railroads have adequately tested the new ratemaking authority given them under this section.

The League is of the opinion that it is too early to tell how the 4R Act and subsequent Rail Transportation Improvement Act are being implemented for the reasons listed in the preceding paragraph. However, the League would like the opportunity to offer input to this subcommittee at a later date, perhaps six months or a year from now, in further oversight hearings regarding the Act. At that time, the League believes it will be in a much better position to submit detailed examples of the effectiveness and problems of the 4R Act.

As mentioned in the above paragraphs, the 4R has brought about a number of proceedings and studies being conducted by the Interstate Commerce Commission. The League is participating in many of these proceedings and will now list the ones in which it is actively participating. This will (1) illustrate the great importance the 4R Act has to the League and its members; and (2) provide the subcommittee with additional and perhaps new information which indicates that it is quite early to judge what effects the 4R Act has had on our nation's railroads.

The proceedings mandated by the 4R Act in which the NITL is participating include—

Ex Parte 274 (Sub-No. 2), Abandonments of Rail Lines and Discontinuance of Service-Establishment of regulations which will govern the filing and processing of applications to abandon railroad lines or to terminate rail service.

Ex Parte 282 (Sub-No. 1), Railroad Consolidation Procedures-Establishment of appropriate procedures to expedite the handling of railroad consolidations under Section 5(2) and (3) of the Interstate Commerce Act.

Ex Parte 297 (Sub-No. 1), Rate Bureau Investigation-Implementation of the rate bureau sections of Public Law 94–210.

Ex Parte 320, Market Dominance-Establish standards and procedures for determining whether a railroad has "market dominance" over a particular service.

Ex Parte 322, Expeditious Handling of Divisions of Revenue Cases—Establish standards and procedures for the conduct of proceedings for the adjustment of divisions of joint rail rates and fares.

Ex Parte 323, Railroad Holding and Affiliated Companies—Study of conglomerates and other corporate structures in the rail industry to determine their effects upon transportation services.

Ex Parte 324, Seasonal, Regional or Peak Demand Rates—Establishment of standards and expeditious procedures for establishing rail rates based on seasonal, peak or regional demand.

Ex Parte 329, Review of Department of Transportation. Preliminary Classification of Rail Lines—Establishment of Final Standards, Classification, and Designation of Lines of Class I Railroads in the United States in accordance with Section 503 of the Railroad Revitalization and Regulatory Reform Act of 1976.

Ex Parte 331, Separate Rates for Distinct Railroad Services—Establishment of expeditious procedures for the publication of rates for distinct rail services.

Ex Parte 334, Car Service Compensation Basic Per Diem Charges—Review and establishment of rules and regulations relating to private car compensation and maintenance of existing regulation regarding incentive per diem charges.

Ex Parte 338, Establishment of Standards and Procedures for Determining Adequate Railroad Revenue Levels.

ICC Docket 36367, Uniform System of Accounts for Railroads—Issue regulations and procedures prescribing a uniform system of cost and revenue accounting and reporting system for all railroads.

With respect to the above proceedings some have recently run their statutory time limitations for completion while others are still pending. The League believes all provisions stemming from the 4R Act should be granted adequate time subsequent to implementation before measuring their effects. *Again*, the League wants to reiterate that until the provisions of the 4R Act have had sufficient trial, it would be premature to amend the act in any way.

The League is pleased to have the opportunity to present its views for the record of hearings on the effectiveness and problems of the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210. I thank you for including the League's views on this subject in the record of hearings.

Sincerely,

J. ROBERT MORTON,
President.

NATIONAL RAILROAD PASSENGER CORP.,
Washington, D.C., August 3, 1977.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your request for comment on S. 1598, introduced on May 24 by Senators Pell, Biden, Case, Chafee, Heinz, Javits, Mathias, Ribicoff, Roth, Sarbanes, Weicker and Williams, which would facilitate the installation of fencing along the Northeast corridor rail line by eliminating the state matching requirement and by authorizing $150 million in Federal funding for this purpose.

We consider the erection of adequate fencing to be one of the most important parts of the Northeast Corridor Improvement Program. Proper fencing should considerably help to reduce vandalism, which damages equipment and delays trains, and reduce accidents to the benefit of all concerned—the public and our passengers.

One of our concerns when the decision was made by the previous Administration to make the fencing subject to local matching funds was that this would at best delay if not entirely frustrate a very important part of the overall program. Moreover, the fencing construction is a part of the program that could have begun immediately, without waiting for sophisticated planning and design work.

Accordingly, we very much support the intent of S. 1598, and we would urge both the Congress and the Department of Transportation if at all possible to give fencing needs in the corridor the priority warranted.

Sincerely,

BRUCE PIKE,
Vice President, Government Affairs.

GRAND TRUNK WESTERN RAILROAD CO.,
Detroit, Mich., August 3, 1977

Senator RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Senate Office Building, Washington, D.C.

DEAR SENATOR LONG: Please be advised that I have reviewed the above captioned bill entitled the Railroad Improvement Act of 1977 and wish to afford you my comments in support thereof.

Unfortunately, it is a fact that throughout the industry there are a multitude of light density branchlines of railroad that fail to support themselves, yet their existence is extremely important to the economy of that locality and state. Theoretically, when avoidable costs exceed revenues produced, the railroad is in a position to petition the Interstate Commerce Commission for abandonment. In arriving at a decision as to whether the public convenience and necessity permits a particular abandonment the Commission must weigh the respective interests and evaluate the burdens of the railroad and shipping public as to whether continued operations are required. In most cases the net result of such a decision fails to satisfy either interest.

The railroad when required to continue such operations is economically compelled to do so at a level of service that emphasizes deterioration not rehabilitation. This is an unavoidable result for the railroad must conserve its limited resources for those segments of its operation that are most pressing. The customers who are desirous of improved service are relegated into a dilemma of having to compromise their needs in order to assure the status quo.

The customer recognizes that present legislation provides for mechanisms of subsidy upon abandonment, however, the risk of lending their support to a proceeding without assurance that the line will be rehabilitated in the even abandonment is permitted, is a risk too great to rationally entertain and results in a decision which offers no immediate solution to the needs of either the railroad or the users of that line.

Present legislation allows for no alternative but continued deterioration of a railroad's ability to provide service, with decreasing revenues resulting in further deterioration of service.

The proposed legislation could put a halt to this self-defeating cycle, and reverse the same resulting in less cost to the public and disruption to the economy of the regions that such non-viable lines serve.

As an example: Recently, the Grand Trunk had a petition for abandonment denied on a portion of its operations between Imlay City and Caseville in the State of Michigan. The primary purpose of submitting this application was predicated upon the inability of the railroad to recover the capital or investment expenditures that would be required to update this line to a 1977 standard.

Our Cass City line was originally constructed in the late 1800's and was at that time capable of supporting agricultural customers with cars that had a capacity of 40 to 50 tons. In this vein much of the rail on this line dated back to 1902 and of 80 pound weight which is completely inadequate to accommodate present day transportation needs. The area primarily affected by this abandonment was agricultural in nature and by today's standards the shipment of grain generally involves 100 ton equipment, far in excess of what the original track structure was built. The existing rail and bridges cannot sustain the continued use of such equipment without disasters happening and/or interruptions in service. The present use of 100 ton equipment over this line is drastically limited and accomplished only via the use of spacer cars (empty cars used to distribute the consist weight), the necessity of having patrols for broken rail following each movement, and restrictions of low speeds.

As a result of these restrictions the railroad cannot economically offer these customers the advantage of multiple car rates and unit grain trains. This prevents our customers from efficiently merchandising their product and maintaining a competitiveness in the market. In this particular case the Grand Trunk had evaluated the projected traffic in view of the cost of rehabilitation and could not possibly justify the needed investment. However, it did recognize the needs of the customers as being real and deserving the efficiencies and advantages of current railroad technology.

In keeping with the Commission decision denying it application, the Grand Trunk continues to maintain this service retaining an operation completely incompatible with modern railroading yet dictated by the necessity of minimizing its losses, with a result which is unsatisfactory to all parties of interest.

The above demonstrates the need for enacting legislation that provides financial assistance to projects which have, as their principal objective, the elimination of deferred maintenance and the rehabilitation or upgrading of certain rail lines that are identified as potentially subject to abandonment. To reiterate, the need to evaluate and employ constructive solutions can best be accomplished prior to a formal application and decision of the Commission. It would appear that such a program could and should be coordinated and tailored to the requirements of a state railroad plan.

May I take this time to thank you for permitting me the opportunity to comment in support of proposed Senate Bill 1793 and request that the foregoing views be incorporated in the record of your Committee concerning Senate Bill 1793.

Sincerely,

JOHN H. BURDAKIN, *President.*

Enclosure.

[From Traffic World, July 25, 1977]

GRAND TRUNK MANAGEMENT LAMENTS ALJ'S DENIAL OF ABANDONMENT PETITION

An initial decision by administrative law judge in the Interstate Commerce Commission served July 8, refusing Grand Trunk Western Railroad the right to discontinue 66.27 miles of its light-traffic line between Imlay City and Caseville, Mich. (T.W., July 18, p. 71), still leaves Michigan Thumb-area shippers and Grand Trunk in a dilemma, according to the railroad's management.

Nearly three years ago, the GTW filed a petition to discontinue the branch line because of its being an "annual unprofitable operation and financial drain." The railroad stated that $4.4 million dollars of track upgrading would also be required over six years to improve the line's capacity to handle 100-ton grain hopper cars competitively. It asserted, further, that the track structure—some rail is over 70-years-old—is not strong enough to support the demands of today's agricultural rail traffic, and that earnings of the limited traffic on this branch do not warrant the rehabilitation investment.

The Grand Trunk's president, John H. Burdakin, said that since October, 1974, he has repeatedly stated that "we are willing to provide railroad service on unprofitable light-density lines, but we must have financial relief; we cannot afford losses over which we have no control."

"Because present laws require rail abandonment before any federal funds can be made available, we sought the only avenue available to us to gain help," Mr. Burdakin said.

"It is most unfortunate that not only in this instance but through the state and the nation, light-density branch lines must be forced into disrepair, and severe speed restrictions that prevent adequate rail service—driving away what freight that does exist and thus resulting in the justification for abandonment. If abandonment is approved, then federal funds with state assistance are available to continue service and thus permit industry and agriculture of the region to remain competitive."

"Congressman Bob Traxler, of Bay City, recognizes the need to provide support to permit continued rail service in the legislation he proposed several weeks ago. The GTW hopes for prompt action by Congress so that help will arrive before it's too late.

"Even though Cougressman Traxler has steadfastly opposed abandonment of the Imlay City-Caseville line, he recognizes the financial problems faced by the communities and the railroads, and offers help through Congressional legislation."

The denial of the Grand Trunk abandonment petition, Mr. Burdakin declared, is "a decision that leaves Michigan citizens, shippers, and the railroad as losers, and it puts the agricultural 'thumb' area at a competitive disadvantage with other areas because it does nothing to encourage the much-needed rail improvements."

[From the Saginaw News, July 13, 1977]

ICC SPARES THUMB RAILS

The Interstate Commerce Commission's denial of Grand Trunk Western Railway's petition to terminate freight service between Caseville and Imlay City will keep farm goods moving over the tracks in one of the best agricultural areas in the state.

The ICC denial naturally comes as welcome development for growers and shippers dependent upon that 66 miles of track to move their commodities down the middle of the Thumb region.

For them, it's an all-season economic lifeline without which they could be cut off from access to connecting lines heading to major market areas.

Thus the ICC ruling ends a period of uncertainty that has heightened every year since Grand Trunk filed to abandon the run in 1974. Moreover, it is a feather in the cap of U.S. 8th District Rep. J. Bob Traxler, who has fought hard to keep that line open for a major farm belt in his district.

But like all hard decisions, there is a winner and a loser. Uncertainty now shifts to Grand Trunk which must continue service along what is, at best, mar-

ginal trackage badly in need of repair and upgrading. And for Traxler, it means putting on the other hat and going to bat for the railroads.

The fact that Grand Trunk failed to persuade the ICC that it couldn't operate profitably on that line doesn't alter the fact that the trackage isn't capable of carrying the full-unit trains it would like to put on to increase business.

Nobody is more aware of that than Mr. Traxler.

His position all along is that he wasn't fighting the Grand Trunk itself—that he was merely fighting to head off a premature abandonment ruling that might have foreclosed for all time freight service up and down the mid-Thumb agricultural corridor.

What he must do now is persuade the House Interstate and Foreign Commerce Committee to approve a bill, which he is sponsoring, that would provide some federal subsidies for the upgrading of lines ordered to remain in operation by the ICC.

This is a crucial bill to railroads everywhere. If the federal government is going to order some lines to operate, it ought to be willing to help railroads get marginal tracks into good operating condition.

Now that the weight has shifted to the other side, Mr. Traxler must prove to be as good a friend to the railway.

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C. August 4, 1977.

HON. JAMES B. PEARSON,
Senate Committee on Commerce, Science, and Transportation, Dirksen Senate Building, Washington, D.C.

DEAR JIM: I would appreciate it if you would include the enclosed copy of a letter from Governor Ed Herschler of Wyoming in the record of the recent hearings on S. 1793, the Railroad Improvement Act of 1977.

I fully support Governor Herschler's recommendations.

Kind regards,

Sincerely,

CLIFFORD P. HANSEN,
U.S. Senator.

Enclosure.

WYOMING EXECUTIVE DEPARTMENT,
Cheyenne, Wyo., July 19, 1977.

HON. RUSSELL B. LONG,
Chairman, Surface Transporation Subcommittee, Senate Committee on Commerce, Science, and Transportation, Washington, D.C.

DEAR SENATOR LONG: I understand that your subcommittee has scheduled hearings on S. 1793, the Railroad Improvement Act of 1977. I would appreciate it if you would include my remarks in your hearing record.

Regarding Section 2(a)(1) of the bill, I ask that consideration be given to extending the period for 100% federal funding through September 30, 1978, with the other funding periods extended accordingly. Delays in the publication of federal directives and regulations have set back our planning at the state level until the year for 100% federal funding was well underway. Also, our planning effort has been made more difficult by the fact that the bill was originally directed toward providing assistance in the northeast part of the United States. Since we confront problems of an entirely different nature, it has been more difficult for us to fit our program into this framework.

I am also concerned about Section 2(h) and Section 4(b), which establish formulas for allocations of funds among the states. The new formula would eliminate minimum allocations and would distribute the money primarily upon the lengths of railroad lines which may be abandoned. With only nine miles of potential abandonment in Wyoming, we would not be able to obtain federal assistance for our problems. It is essential to maintain a minimum funding level of at least the present 1 percent for each state.

Eventually, I hope for changes in the law which will directly address the problem which Wyoming confronts, such as railroads, and relocation of railroad lines from the centers of our small towns. Our funding needs are in the areas of maintaining our presently viable railroad system and dealing with its impacts, not in the area of line abandonment.

Yours sincerely,

ED HERSCHLER, *Governor.*

STATEMENT OF HON. HARRISON A. WILLIAMS, JR., U.S. SENATOR FROM NEW JERSEY

WILLIAMS TESTIFIES ON HIS LEGISLATION TO IMPROVE CONRAIL COMMUTER PROGRAM; SAYS MEASURE WILL LIKELY BE INCLUDED IN OMNIBUS RAILROAD BILL

WASHINGTON, July 29.—U.S. Senator Harrison A. Williams, Jr. (D-N.J.), said today his legislation to improve the rail commuter program operated by the Consolidated Rail Corporation would require ConRail to expand its current level of operations in New Jersey and other Northeast states, if local jurisdictions provide financial backing.

In testimony prepared for the Senate Subcommittee on Surface Transportation, Williams said he was hopeful some version of his legislation would be included in an overall Railroad Improvement Act being developed this year.

(Today's hearing was scheduled for 9:30 a.m. in Room 5110 of the Dirksen Senate Office Building.)

A full text of Williams' testimony follows:

Mr. Chairman, I would like to thank you for holding these hearings on amendments to the Railroad Revitalization and Regulatory Reform Act of 1976. I am pleased to submit this statement for inclusion in the Record.

S. 1793, the Railroad Improvement Act of 1977, addresses several issues in the administration of Federal rail programs.

I am particularly pleased that the bill includes the provisions of two bills which I have cosponsored, S. 1324 and S. 1598.

S. 1324, introduced by the distinguished Chairman of this Subcommittee, Senator Long, would provide funds for the payment of life and health insurance benefits for the retired employees of the bankrupt railroads that now constitute ConRail.

The rail amendments passed last year were designed to cover these benefits. As a result of a Sixth Circuit U.S. Court of Appeals ruling, however, retirees of the northeastern railroads suddenly found that they must assume payment of their own premiums if their coverage was to continue. This situation is particularly unfair since these retirees were given assurances that their premiums would be paid by their former employers as part of an overall retirement benefits package.

The provisions now included in S. 1793 would provide ConRail with a Federal loan equal to the amount required for the premium payments. In essence, this will make the premium payments administrative costs for the railroads involved since they can use the loan money to cover the costs of the premiums. I am very much in favor of these provisions.

S.1598, introduced by Senator Pell, is also incorporated in S.1793. It would allow 100 percent Federal funding for fencing and station improvements along the Northeast Rail Corridor. States such as my own have had difficulty raising the 50 percent matching funds for fencing and nonoperational station improvements required under present law.

When the trains start to operate at high speeds along the improved corridor, fencing must be in place to protect neighboring residents, rail passengers and employees. Adequate stations, including access areas, parking and visitor facilities need to be ready to accommodate rail users. I am afraid that the state matching requirement could delay these essential elements of the Northeast Corridor project so I strongly endorse the provision of S. 1793 that would eliminate this matching requirement.

S. 1793 does not deal with the commuter service program operated by ConRail, but my state and several others have had problems with this program that require legislative solutions. Therefore, I would like to propose several commuter service amendments, which I hope the Subcommittee will consider in marking up an omnibus rail bill. These amendments are included in S. 1890, a bill I introduced July 19. They are designed to continue and expand ConRail's commuter service, to resolve the problem of accident liability insurance for such service, and to clarify the Federal government's share of the costs of repairing commuter lines and equipment.

The bankrupt railroads which were conveyed to ConRail in 1976 operate a network of commuter services. Some of these services were subsidized under long-term contracts with state or local authorities. The Rail Reorganization Act of 1973 required ConRail to honor certain of these preconveyance contracts. But once they expire, there is no guarantee that ConRail will continue the service. S. 1890 would require ConRail to continue the service as long as a state or local

authority offers a subsidy adequate to cover the cost. The level of the subsidy would be determined in accordance with standards developed by the Rail Services Planning Office.

The Rail Revitalization and Regulatory Reform Act of 1976 required ConRail to continue the bankrupt railroads' other commuter services even though they were not covered by binding preconveyance contracts. ConRail must continue to operate commuter services that were being provided at the time of conveyance, as long as an adequate subsidy is provided.

But ConRail is under no obligation to provide new commuter services or to make changes in existing services, if a state or local authority requests them. In New Jersey, the State Department of Transportation would like to add more trains to the lines serving shore communities and the capital city of Trenton. More frequent service will also be needed along the former New York and Long Branch Line once a major electrification project is completed.

The routes and schedules of the bankrupt railroads should not be carved in stone. A measure of flexibility is needed to meet changing demands and conditions.

S.1890 would provide this flexibility by requiring ConRail to operate additional or modified commuter services, if a state or local government offers a subsidy in accordance with Rail Services Planning office standards.

A third provision of S. 1890 addresses the problem of catastrophic liability insurance. ConRail has been unable to obtain insurance of accident claims below $2 million or above $50 million. ConRail has asked its state and local subsidizers to assume those risks not covered by insurance. But certain states are prohibited by law from guaranteeing the payment of unpredictable losses.

To resolve this dilemma, my bill would authorize the U.S. Railway Association to reimburse ConRail for any uninsurable losses of up to $50 million per claim. The Rail Services Planning Office would have to certify that ConRail has sought in good faith and failed to obtain insurance before ConRail could be reimbursed for any accident losses.

The fourth and final issue addressed by S. 1890 is the program for rehabilitation commuter lines. Under the Railroad Revitalization and Regulatory Reform Act, Federal assistance is provided to state and local authorities for subsidizing ConRail's commuter operations and for restoring dilapidated tracks and equipment. This assistance is available for 2½ years, with the Federal government assuming 100 percent of the costs the first year, 90 percent the second, and 50 percent the last 6 months.

The problem is that rehabilitation projects can take many months and even years to complete. And the Urban Mass Transportation Administration, which administers the assistance program, has maintained that the Federal share of costs is determined by the date such projects are completed. Thus, a project begun and largely carried out during a period of 90 percent Federal assistance but not completed until the Federal share has dropped to 50 percent, would be eligible for only 50 percent Federal funding.

S. 1890 would correct this inequity by making it clear that the Federal share is determined by the date a project is initiated. This is comparable to a provision in S. 1793, which applies the same principle to projects for rehabilitation of freight lines.

Mr. Chairman, rail transit is one of the most energy efficient and environmentally sound means of moving people. By taking steps to improve ConRail's commuter rail program, we will be furthering the goals of energy conservation and clean air. The amendments I propose would be beneficial to the commuting public, state and local transportation authorities, and ConRail. They would help to assure continuity, flexibility, and fairness in commuter service contracts and operations.

I would greatly appreciate the Subcommittee's consideration of incorporating the provisions of S. 1890 in a 1977 omnibus rail bill.

STATEMENT OF HON. WALTER D. HUDDLESTON, U.S. SENATOR FROM KENTUCKY

Mr. Chairman and members of the committee: I appreciate the opportunity to testify before the Senate Commerce Subcommittee on Surface Transportation in this hearing on the need for amendments to the Railroad Revitalization and Regulatory Reform Act of 1976.

When the Congress enacted the Railroad Revitalization and Regulatory Reform Act in 1976, it could not have foreseen what the railroads' plans with regard to branch line abandonments would be in 1977 and future years. In fact,

it was not until the week of May 2 of this year, when all railroads were required to file maps with the ICC indicating what their abandonment plans for the future would be, that this information became available.

Most states, except those in the Northeast and several in the Midwest, now are engaged in rail services planning for the first time. It takes time to gear up, to hire staff; to apply for a federal rail planning grant; to formulate a state rail plan; and to seek federal assistance to continue service on threatened rail lines.

The Department of Transportation, however, will not release entitlement funds for rail service assistance until a state first has submitted a rail plan to the Secretary and the Secretary has approved that plan. Meanwhile, abandonments continue to be processed by the ICC.

According to information which Secretary of Transportation Brock Adams furnished to me on July 1, 29 states have not completed their state rail plans and therefore are not eligible at this time for federal assistance to preserve rail service on lines which may be approved for abandonment. I would like to include in the record following my testimony Secretary Adams' letter and enclosure.

In my own State of Kentucky, some 170 miles of rail lines may be abandoned in the next few years. If these abandonments should take place, severe economic dislocations would occur throughout Kentucky.

Through no fault of its own, Kentucky did not become aware of the magnitude of this problem until after May 2 when the railroads first filed their plans with the ICC. Therefore, under present law, Kentucky will not be able to take advantage of the federal assistance which the Congress expressly provided for the purpose of cushioning the impact of rail abandonments until it has prepared the rail plan and submitted an application to the Secretary of Transportation for federal rail service assistance. In the interim, however, we could lose essential rail services.

As Chairman of the Subcommittee on Agricultural Production, Marketing, and Stabilization of Prices of the Senate Committee on Agriculture, Nutrition, and Forestry, I am also deeply concerned about the impact of rail abandonments on agriculture and rural development. Two weeks ago my subcommittee heard testimony from a wide variety of agricultural interests and representatives from rural America who depend upon rail transportation to move their products to domestic and international markets. Every one of these witnesses expressed concern over the state of rail transportation in the United States today.

While I am not unsympathetic to the financial plight of some of our railroads, I also believe very strongly that we should not move too hastily by ripping up the tracks until we are certain that these lines will not be needed in the future to move people as well as to transport agricultural commodities and other essential freight.

Because of my deep concern, I introduced S. 1836, the Rail Service Protection Act of 1977, on July 11 to defer for 18 months approval of all railroad abandonments that are opposed before the Interstate Commerce Commission by any party. I hope that the Subcommittee will consider S. 1836 in these hearings along with the other legislation.

This legislation is necessary, in my opinion, because of the vast amounts of trackage throughout the Nation which the railroads have suddenly indicated they want to abandon. While figures on precisely how much rail mileage is involved are expected to be published shortly by the ICC, preliminary indications are that perhaps as much as ten percent of the 200,000 miles of Class I railroad in the United States could be abandoned during the next three to five years.

This bill also restores for 18 months, and until the beginning of the fiscal year following the 18 months, the 100 percent federal share of rail service assistance which, on July 1, was reduced to 90 percent. This reduction means that, for the first time, states and rail users outside the Northeast, who are currently eligible for federal assistance, will have to furnish ten percent of the operating losses in order to continue rail service on branch lines which the ICC otherwise would have permitted to be abandoned. This measure would allow essential rail services to continue while states prepare their rail plans.

In summary, my concerns are as follows. First, I am concerned about the impact of abandonments on agriculture and rural America. And, second, I would hope the committee could find some way, whether it be through a temporary moratorium on abandonments or through federal reimbursement to the states, to offer greater protection to rail users in states that are not yet eligible to receive federal rail service assistance.

I thank the subcommittee for the opportunity to testify on this important matter.

STATEMENT OF HON. CLIFFORD P. CASE, U.S. SENATOR FROM NEW JERSEY

I support the effort as included in S. 1793 to amend the Regional Rail Reorganization Act of 1973 to correct an oversight involving the health and life insurance benefits of retired railroad employees. Our effort is to provide for health and life insurance coverage for railroad pensioners who were non-contract employees.

These people are retired workers who served their employers faithfully. It was certainly not the intent of the Congress, in undertaking to reorganize the bankrupt railroads, to make worse the lot of the retired worker.

Earlier, in the rail reorganization, Senator Williams and I learned that a number of our constituents were being adversely affected by the rail reorganization. At that time we worked closely with our colleagues on the Commerce Committee to make clear Congress' intent that pension benefits for retirees were not to be discontinued as the result of reorganization.

It would be wrong to expend the great amount of resources which we have committed to rehabilitation of the rail system and at the same time ignore the needs of the persons with long years of service who helped to build the system.

STATEMENT OF HON. JOHN C. DANFORTH, U.S. SENATOR FROM MISSOURI

Thank you, Mr. Chairman. As the ranking minority member of this subcommittee, I appreciate the opportunity to state my support of provisions within Senate Bill 1793 which will amend 1976 legislation passed by Congress authorizing $360 million in rail service continuation grants to states through 1980. The purpose of the original grant program was to ease the transition for shippers who will be affected by cutting back the rail line network of this country to an economically justifiable level. Under the 1976 legislation, these grants were to be used for the continuation of rail service that would otherwise have been abandoned, for acquisition or rehabilitation of lines so that service could continue on sections that would otherwise have been abandoned and for substitution of alternative modes of transportation for shippers in areas affected by discontinued rail service.

The problem with the 1976 legislation is that before any state can receive federal monies for continuation of rail service or the rehabilitation of rail lines, the rail line in fact must be abandoned. In my view, this is comparable to closing the barn door after the horse has escaped.

In Missouri, there are approximately 7,800 miles of rail lines. Presently, two small lines have been abandoned in the western part of the state and a third line in northwest Missouri is under consideration by the Interstate Commerce Commission for approval of abandonment. It has been estimated by the State of Missouri's Department of Transportation that in the next few years up to 30 percent of the rail trackage within the state may be subject to abandonment or discontinuance of service. Under the present program, these lines would have to be actually abandoned before the state could apply for federal grants to assist in rehabilitating the rail line. Thereafter, the state would somehow have to convince the railroad to come back. It is the view of the Missouri Department of Transportation that this approach is not workable. Once a railroad has abandoned a rail line, the track is usually beyond rehabilitation and other modes have generally captured the shippers' market abandoned by the railroads.

I am pleased that S. 1793 will change the present unworkable law in this regard. Under S. 1793, when a rail line is identified as being potentially subject to abandonment or the line is being proposed for abandonment or discontinuance before the Interstate Commerce Commission, or there is a petition before the Interstate Commerce Commission for abandonment or discontinuance of service, a state may move promptly for federal assistance. The resulting funds would hopefully convince the rail carrier to remain in the area. Now, we are closing the barn door before the horse escapes. I commend the sponsors of this legislation for coming to grips with this problem within a short time since the passage of the 1976 legislation. S. 1793 has the enthusiastic support of the Missouri officials who are concerned with the transportation problems within the state.

STATEMENT OF WILLIAM C. HARSH, JR., CHIEF, BUREAU OF RAILROADS, ILLINOIS DEPARTMENT OF TRANSPORTATION

My name is William C. Harsh, Jr. My business address is 300 North State Street, Chicago, Illinois 60610. I am Chief of the Bureau of Railroads of the Illinois Department of Transportation. The Department is the designated State agency for Illinois under the terms of the Regional Rail Reorganization Act of 1973, and the Bureau of Railroads has jurisdiction over the State's program for local railroad freight service continuation assistance. The Bureau also is responsible for assisting in the presentation of the State's position in Interstate Commerce Committee abandonment proceedings and for administering the State's Amtrak 403(b) program.

I appreciate the opportunity to testify today at this oversight hearing on the manner in which the Federal Railroad Administration had conducted its activities in the area of local railroad freight service continuation assistance. While we in Illinois have been, by and large, favorably impressed with the work of the Office of Federal Assistance at the Federal Railroad Administration, the experience of some of our sister States has not been nearly so fortunate and there have been several important areas in which Illinois itself has been unable to achieve a satisfactory relationship with the FRA.

Perhaps the most important of the areas of disagreement between Illinois and the Federal Railroad Administration has been the refusal of the agency to permit States to seek reimbursement for the cost of a single project from more than a single year's entitlement. For example, if a State had an entitlement of $1 million annually and undertook a rehabilitation project costing $1,250,000, the Federal Railroad Administration has taken the position that it will not permit reimbursement of the $250,000 that exceeded the State's entitlement for the year in which the project was undertaken from a subsequent year's entitlement.

The practical effect of this position will be that either the States will be unable to undertake meaningful rehabilitation programs and thus will continue to incur high annual subsidy costs that could be reduced or eliminated through cost savings brought about by rehabilitation, or that the States will be forced to undertake rehabilitation programs in small, uneconomic increments that will result in unnecessarily high costs overall and be subject to the ravages of inflation as well. A practical example of this problem arose in Illinois where, due to poor track conditions, the State had been forced to utilize two crews to make a daily 130-mile round trip on a line between Decatur and Paris. This resulted in a daily unnecessary cost for a fresh crew and taxiing the relieved crew to its home base of approximately $715, or an annual cost of roughly $225,000. In addition, the agent on the line was forced to refuse approximately 50 percent of the revenue cars offered by customers at Decatur due to the restriction against 100-ton hopper and tank cars on the line. This restriction was the result of poor tie, joint, and roadbed conditions. While the precise commodities, routes, and destination of the refused traffic was unknown, and thus no figures on the net profit contribution of the traffic were available, both the agent and the State felt strongly that the traffic would add significantly to the financial viability of the line and would, in fact, make it profitable. The cost of rehabilitating the Decatur line to achieve the cost reductions and revenue increases described above was roughly $1,300,000, an amount that exceeded the State entitlement available for rehabilitation in the first year. In order to achieve the cost savings and revenue increases, the State undertook the improvement with its own funds. Although the final figures are not yet in, it appears the cost of the rehabilitation will exceed the State's first year entitlement by several hundred thousand dollars. At this time, the Federal Railroad Administration has not authorized the State to seek reimbursement of this amount from its second year entitlement. We believe this is inequitable, especially in view of the fact that in the highly-successful Federal-aid Highway Program this type of transaction occurs routinely. We believe the Federal Railroad Administration's policy on this point will cause substantial problems to all the States in the years ahead as they seek to rehabilitate or acquire lines in the local railroad freight assistance continuation program. Section 2(a)(3) of S. 1793, which I understand is pending before this Subcommittee, would overcome this problem and assist the States in undertaking necessary rehabilitation and acquistion projects.

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A second important area in which I would criticize the Federal Railroad Administration's performance in the local railroad freight continuation assistance program has been that concerning in-kind benefits. As I understand it, in-kind benefits were included in this program to recognize the fact that the States and other parties often spend substantial sums of money in furtherance of the success of the program in areas in which Federal dollars are not directly spent. The problem is that the Federal Railroad Administration has taken the position that State costs eligible to be applied as in-kind benefits cannot be carried from year to year, but rather must be applied to the State matching share in the same year they are incurred. On an abstract level, we in Illinois cannot understand why a cost for which the Federal Railroad Administration is willing to give a State credit in one year should not be equally deserving of credit in any subsequent year. If a State incurs an extraordinary cost that exceeds it matching share in one year, we believe it should be able to apply the balance to its matching share during another year. On a practical level, we are very much concerned that Illinois and its sister States will not be able to recapture the very substantial program start-up costs that were incurred with State funds during the first program year in which there was no matching share against which to apply them. Illinois, for example, undertook two State-funded planning grants and incurred substantial in-house planning and program operation costs which, we believe, should be applicable against our matching share during the current program year. Again, I understand that section 2(a)(3) of S. 1793 recognizes and overcomes this problem.

One other area in which there has been substantial conflict between the States and the Federal Administration has been that concerning the fundamental nature of the local rail service continuation program. As you know, the program vests the primary responsibility for planning and programming in the States and provides each State with an entitlement to assist it in meeting its planning and program obligations. However, in the view of the States the Federal Railroad Administration has sought to convert the program to a grant basis by asserting the right of prior approval over all but the most insignificant expenditures. Until recently, the Office of Federal Assistance insisted on prior approval of any contract in excess of $10,000 which meant, in practical terms, virtually all activities undertaken by the States. While the Office has now raised the review level to $50,000, the point remains that it is each State, and not the Federal Administration, that should be making the decision as to how its entitlement can best be spent to meet the needs of its citizens. Moreover, it now appears that the Federal Railroad Administration is about to reassert the $10,000 prior review limit, this time under the guise of equal employment opportunity review. The practical result will likely be the same, that is, to slow the progress of the States in carrying out their programs. Illinois, for instance, recently waited four months for approval of a perfectly routine $25,000 contract. I understand that Section 2(e) of S. 1793 would clarify the relationship of the Federal Railroad Administration and the States under this program and thereby alleviate much of the problem.

To this point, I have spoken of specific program issues that cause the Illinois Department of Transportation to be critical of the Federal Railroad Administration's conduct of the local railroad freight continuation assistance program. I would now like to turn to a broader and less easily definable, but perhaps more important, concern that we in Illinois have with the way in which this program has been conducted at the Federal level. While we do not have specific evidence of a conscious effort to delay the implementation of the State rail continuation programs, and especially rehabilitation projects, such delay has certainly been the result of the actions of the Federal Railroad Administration. Rehabilitation projects that are urgently needed by several States if they are to reduce their costs and subsidy outlays were first delayed when the Federal Railroad Administration ruled that a lease with the Penn Central trustees would have to be obtained before such projects could begin. I chaired the negotiating committee that represented the States with Penn Central, and I believe that FRA reviews at various stages of the negotiations added three to four months to what otherwise would have been an eight-month negotiation. Rehabilitation projects were then delayed by the fact that the Federal Railroad Administration insisted on prior approval of such projects and yet promulgated no standards by which they were to be judged. An "interim" standard, which could have been released at the very beginning of the program, was finally distributed on June 7, 1977, well into the current construction season. In the planning field, many States outside the Northeast have seen their rail planning efforts stop dead for lack

of FRA approval of their planning work statements. In Oklahoma, for example, nearly six months elapsed between the submission of the planning work statement and the flow of funds and, as a result, the rail planning program personnel were reassigned to other duties for two months during the Spring. Illinois and the other Northeastern States are submitting annual program updates in spite of the fact that the regulations under which such updates were to be prepared have yet to be published in final form.

It also seems to us that the Federal Railroad Administration has adopted an excessively narrow view of the options available to solve transportation problems under this program and a very short term outlook on specific projects. Early in the program, the FRA stated that, despite a more flexible Rail Services Planning Office standard on the subject, it would not approve any management fee of more than 4½ per cent of revenues. This severely restricted what at the time was a good deal of creative thought among the States with regard to ways in which the management fee could be structured so as to provide an incentive for the operator to do a good job. It also made it extremely difficult to structure solutions on lines on which revenues were sufficiently low that 4½ per cent of such revenues could not adequately compensate an operator.

Perhaps a more striking example, however, has come in the area of track rehabilitation. Here, the FRA has consistently held to a standard of authorizing only short-term improvements, even though these result in higher long-term costs. For example, I attended a one-week seminar conducted by Federal Railroad Administration instructors in which a major message was that adequate ballast was necessary to hold track in surface once it had been resurfaced and to protect the life of newly-installed ties. Yet the FRA cut the request for ballast submitted by Illinois on the Decatur rehabilitation project, which had been prepared for Illinois by a large railroad consulting firm, to 10 percent of the request and later, after protests from the State, restored it to only about 50 percent of the request. We believe that this decision will lead to a shorter lifespan for the improvements made to the Decatur line.

In a similar vein, we in Illinois feel strongly that the most effective way to minimize long-term subsidy and rehabilitation costs is to provide rehabilitation money on lines that are designated by the railroads as "potentially subject to abandonment" before the abandonment cycle begins. In this way, many lines that would be viable given the reduced costs and increased traffic brought about by rehabilitation can be prevented from entering the abandonment cycle. This cycle drains the traffic base of a line and leads to such physical deterioration that efforts to revive it at the end of the cycle when abandonment has been permitted must inevitably be more expensive than efforts to prevent the cycle for beginning in the list place. Yet it is my understanding that the Federal Railroad Administration will oppose the provision of S. 1793 that would permit early intervention by the States to prevent the abandonment cycle from starting.

In summation, we in Illinois believe that, although many of the individuals at the Federal Railroad Administration have worked hard in an effort to help the local railroad freight continuation assistance program succeed, the agency as a whole has taken a series of positions that have tended to limit the effectiveness of the program in solving the transportation problems it was designed to address. We believe that S. 1793, which is pending before this subcommittee, will go a long way toward overcoming the problems that have arisen as a result of these positions.

In closing, I would like to take this opportunity to thank this subcommittee for its role in establishing a program to continue local rail services. In the field, we are beginning to see positive results on the lines in our States. Those positive results are, to a large extent, attributable directly to the hard work of this subcommittee.

Thank you.

STATEMENT OF PAUL H. REISTRUP, PRESIDENT, NATIONAL RAILROAD PASSENGER CORPORATION

Mr. Chairman, Members of the Committee, Amtrak is pleased to comment at this time on certain proposed amendments to the Railroad Revitalization and Regulatory Reform Act of 1976 and to the Rail Passenger Service Act. We concur with and support those particular amendments affecting Amtrak as submitted in S. 1793, introduced by Senators Long, Magnuson, and Stevenson. We are, however,

suggesting some alternative language for the proposed amendment to section 402(a), which is discussed later in this statement.

Section 3(a) of S. 1793 would authorize one additional Amtrak executive position at a salary level of up to $85,000. Authorization will permit Amtrak to hire a chief operating officer with jurisdiction over Amtrak's national operations, Northeast corridor operations, operations support functions, and labor relations. Only one other such post exists in the company, which is earmarked for the president and chief executive officer.

In order to gain the maximum return on the large federal investment in new Amtrak equipment, as well as the federal resources now beginning to go into tracks and roadbeds, nationally, there is a need for improving Amtrak's ability to manage its growing areas of responsibility effectively.

Amtrak is severely handicapped by its inability to compete in the marketplace for mature and proven executive personnel with detailed knowledge of all facets of railroad operations. Amtrak is a nationwide system, with still-untapped potential for operational efficiencies (resulting in reduced costs) as well as increased revenues. Amtrak nevertheless does not have the freedom to attract executive talent of the caliber that is available to the nation's railroads. Amtrak does not even have the same ability to attract competent executives that is available to ConRail, which operates only in the northeastern states, and which, like Amtrak, was created by an Act of Congress as a mixed-control, government corporation subject to the Government Corporation Control Act, receiving billions of dollars of federal money for track and facilities improvements.

The proposed amendment to section 303(d) of the Rail Passenger Service Act would enable Amtrak to recruit one additional executive officer within the statutory salary limit that applies to Amtrak's chief executive officer. According to ConRail's last annual report, ConRail has at least nine officers who are paid in excess of the salary limitation that has been applied to Amtrak.

The justification for the addition of a second executive post within the statutory salary limit provided for Amtrak's chief executive officer is perhaps best supported by the magnitude of the total investment now in place or programed for new Amtrak equipment and improvements to tracks owned by Amtrak or ConRail and for other railroads under Title V of the RRRR Act over whose tracks Amtrak's new equipment will operate. This investment, which must of course be managed properly, currently totals $6.4 billion. To keep matters in perspective, it may be noted that the maximum addition to management salaries we are recommending is nineteen thousand dollars, or about one-three thousandth of one percent of $6.4 billion.

This massive investment of public monies in the nation's railroads makes it imperative that Amtrak be able to employ the executive talent it needs to operate its own system and to deal effectively with the private railroads over which it operates. These private railroads, and ConRail, pay their top executives as much as twice or three times more than Amtrak. The amount proposed in this legislation will not place Amtrak on a par with other railroads, (including ConRail), but the authority requested has been determined as necessary for the employment—and retention—of a chief operating officer with the necessary qualifications.

The amendment to section 402(a) of the Rail Passenger Service Act would add language clarifying the cost-compensation principles to be applied by the Interstate Commerce Commission (and the proper method of applying them) in proceedings under section 402 when Amtrak requests the commission to order a railroad to provide services or use of facilities for operation of Amtrak trains.

Section 402(a) was amended in 1973 in an effort to clearly establish that the ICC, in section 402(a) proceedings, could award compensation only for incremental costs incurred by a railroad in the provision of services or facilities for Amtrak, except that reasonable additional amounts could also be awarded for high quality of service. Another statement of the congressional intent now appears to be necessary. Additional suggested language for section 402(a), which is based upon the changes introduced in S. 1793, but differs somewhat in wording, is provided as an attachment to this statement.

The principle that again needs to be articulated is that compensation payable to the railroads for provision of services and facilities to Amtrak be limited basically and fundamentally to only those additional costs actually incurred by a railroad because of the existence of Amtrak operations. Although it is appropriate to pay reasonable additional amounts in the form of an incentive for service by a railroad that is of high quality, it is not appropriate for Amtrak

to be required to pay a return on investment or a profit, or to absorb an allocated portion of costs that would be incurred by the railroads even if Amtrak were not present.

In summary we would again like to stress that we concur with and applaud the Committee's initiative in considering these amendments, which we wholly support and hope to see enacted.

SECTION 402(a) OF THE RAIL PASSENGER SERVICE ACT AS REVISED

[Material to be added is italic. No language would be deleted.]

SEC. 402. FACILITY AND SERVICE AGREEMENTS

(a)(*1*) The Corporation may contract wtih railroads or regional transportation agencies for use of tracks and other facilities and the provision of services on such terms and conditions as the parties may agree. In the event of a failure to agree, the Interstate Commerce Commission shall, within ninety (90) days after application by the Corporation, if it finds that doing so is necessary to carry out the purposes of this Act, order the provision of services or the use of tracks or facilities of the railroad by the Corporation, on such terms and for such compensation as the Commission may fix as just and reasonable, and the rights of the Corporation to such services or to the use of the tracks or facilities of the railroad or agency under such order or under an order issued under subsection (b) of this section shall be conditioned upon payment by the Corporation of the compensation fixed by the Commission. In fixing just and reasonable compensation for the provision of services *and the use of tracks or other facilities required and requested by the Corporation and* ordered by the Commission under the preceding sentence, the Commission shall, in fixing compensation in excess of *actual, reasonable, and necessary* incremental costs *that are demonstrated to be incurred because of the existence of Amtrak operations*, consider *progressively increasing* quality of service as a major factor in determining the amount (if any) of such compensation. If the amount of compensation fixed is not duly and promptly paid, the railroad or agency entitled thereto may bring an action against the Corporation to recover the amount properly owed.

(*2*) Notwithstanding any other provision of this Act, the Corporation may enter into agreements with any other railroads and with any State (or local or regional transportation agency) responsible for providing commuter rail or rail freight services over tracks, rights-of-way, and other facilities acquired by the Corporation pursuant to authority granted by the Regional Rail Reorganization Act of 1973 and the Railroad Revitalization and Regulatory Reform Act of 1976. In the event of a failure to agree, the Commission shall order that rail services continue to be provided, and it shall, consistent with equitable and fair compensation principles, decide, within 180 days after the date of submission of a dispute to the Commission, the proper amount of compensation for the provision of such services *and use of tracks, rights-of-way, and other facilities*. The Commission, in making such a determination, shall consider all relevant factors, and shall not permit cross subsidization among intercity, commuter, and rail freight services.

STATEMENT OF ALAN G. DUSTIN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, BOSTON & MAINE CORP.

The Commerce Committees of both Houses of Congress are currently considering a variety of bills to amend Title VIII of the Railroad Revitalization and Regulatory Reform Act and the State Assistance Program of the Regional Rail Reorganization Act.

Attached to this testimony is a proposal for a substantial alteration of the existing State Rail Assistance Program. It seems to me that the time is right to make the State program more flexible and to give it a permanent foundation.

In previous testimony, a number of issues have been raised. These involve such things as the Federal share, in-kind benefits, planning funds and FRA procedures. All of these are important, but, in my view, the overriding question is: What role should the States have in rail revitalization? Should it be limited to the abandonment question or should it be larger?

All of us dealing with this subject are aware of how the local rail service programs came into being through Section 402 of the 3-R Act and then Section 803

of the 4–R Act. Those two programs will become one on April 1, 1978. They are both similar in that they deal only with lines authorized to be discontinued. Section 802 has a 5 year life.

Despite the problems of start-up, the programs are off to a significant beginning. A small office in the FRA was established to get this new and complicated Federal/State/private activity underway. All 18 Northeast states are participating in the 402 program. About 3000 miles of line are under subsidy. Thirty-two States are eligible for 802 and 31 have had planning grant applications approved. While I know there has been some unhappiness with the Federal Railroad Administration, they have been involved in a difficult situation in the past. Mr. Hall and now Mr. Sullivan, and the FRA team have begun administration of a law that, in the case of 803 is not particularly rational. There have been major impediments in environmental law, civil rights law, the General Accounting Office, the ICC and USRA. There have been three Presidents, three Secretaries of Transportation and 48 States anxious to get underway with as little interference as possible. Program requirements and budget restrictions of OMB have needed to be overcome. Probably the managers of 803 deserve a medal rather than criticism.

It seems appropriate that before we get the existing 803 program, with its limitations, set in concrete we should move to establish a permanent State role. In the first instance, that role should be concerned with the local rail service problem. Working with the States, the rail industry should move away from the negative stance we have taken to the branch line question, and begin to view the branches as vital suppliers of our mainline traffic.

Despite the fact that we are re-organizing under the protections of Section 77 of the Bankruptcy Law, the Boston and Maine has not attempted to abandon a line since before passage of the 3–R Act. My experience has been that when a line is abandoned, the merchandise vanishes from rail. I feel that the traditional rail management view of branch lines has been harmful to the overall rail industry. However, in most circumstances it has been the only option available to stem individual losses.

The theory has been that if a line loses money—chop it off. The procedure has been long and complicated since communities and shippers often fight abandonments. The battles are expensive, costly to railroads also in terms of public image and generally drag out for years.

The real losers are generally the railroads. An example: Railroad A in Maine lost money on a branch line that had one factory producing widgets. The factory shipped only 300 carloads of widgets per year. A minimum of 400 carloads was needed for the branch to break even. The railroad filed a petition for abandonment and, $110,000 in legal and consulting fees and two years later the line is abandoned. A paper manufacturing company consider a new plant on the branch, but rejected the idea as soon as they discovered the line was subject to an abandonment petition. The widget factory then turned to the highway mode to transport widgets. The widgets are now permanently handled by truck. The fact is, that while the originating railroad was losing money, the Boston and Maine, the Delaware and Hudson, the Chessie and the Santa Fe all made money on their divisions of each carload of widgets that moved west. Now that revenue is gone forever.

Another example: Let's assume a profitable Western carrier is moving 100,000 carloads of bridge traffic to and from the far West and Northeast. If 10,000 carloads are lost to truck because of line abandonments on other carriers, that 10 percent drop in business could be devastating. While that Western carrier may have few abandonment problems of his own. he may be severely hurt by activity in the Northeast and Midwest. Thus, while some individual carriers are solving some immediate cash problems via abandonment the entire industry experiences continued erosion of financial viability.

It is a difficult problem because most individual railroads simply do not have the ability to subsidize losing lines for the greater good of the industry. Seeking an abandonment is the only alternative. Obviously some lines should be abandoned. But there are other lines that should be improved and kept operational. Now, with both the House and the Senate reviewing this subject there is opportunity for a new alternative. The railroad industry, labor and management, should work with Members of this Subcommittee to mold a good program that will address the national branchline problem in a comprehensive manner.

The States, in my view, are particularly suited to administer a national local rail service program. They are the closest to the problem. Both the 402 and the 803 programs have given them a beginning both in terms of planning and practice. Now before we become too tied down by the specific requirements of 803, we should design a permanent national program that is reasonable.

Local Rail Service Improvement Program of 1977

(A Proposal by Alan G. Dustin)

BACKGROUND

This is a proposal for a new program for local rail service improvement to be administered by the States. It expands on the concepts of rail service assistance contained in Section 402 of the Regional Rail Reorganization Act of 1973 and Section 803 of the Rail Revitalization and Regulatory Reform Act of 1976.

This proposal is designed to give the States maximum flexibility. It creates a State Rail Fund which, based on a formula, is divided between the States. The money may be expended according to the State Plan which has been previously approved by the Secretary of Transportation. There are two categories within a State Plan. Each category, or Account, has a different Federal match and different rules. The first account allows operating subsidies for branch lines which are losing money but should be maintained in the State's rail system—whether or not the line has been approved for abandonment. The second Account is for rehabilitation.

THE STATE PLAN

Each year the State's designated Rail Official will submit, by June 30, the annual proposed State Rail Plan to the Secretary of Transportation. The Secretary must approve the Plan by September 30, and transmit the Federal funds to which the State is entitled within 30 days thereafter. Any disputes between the Secretary and the State Official should be resolved by binding arbitration (perhaps the ICC) and the plan should be approved and funded as soon as the arbitration decision is made. The State may then proceed to fund all Subsidy and Rehabilitation Projects contained in the Plan without further Federal approval.

Discussion

This seems a function approach that should work over a period of time. Such questions as in-kind benefits, States pooling of resources and project by project funding levels should all be resolved up front in the Plan. Once the Plan is approved by the Secretary there should be no further Federal interference (unless there is a violation of Federal law). It should be possible for the State, with FRA approval, to amend the Plan from time to time.

Funds for the State portion of the State/Federal match must be indentified. They may include in-kind benefits, shipper funds or services, funds or services of other governmental units, of the railroad itself, or any other person approved in the State Plan. To give the Plan wider reach the Federal match for any project may be lowered, but it may not be raised above the maximum set in law.

THE RAIL SERVICE SUBSIDY ACCOUNT

This Account may only be utilized for operating subsidies on project lines. An operating subsidy in a Subsidy Project must cover 100 percent of the difference between operating revenues attributable to the line and the avoidable cost of providing rail service over the line. At the State's option, a Subsidy Project may last as long as 5 years. The Federal match may be as high as: Year 1—100 percent; Year 2—90 percent; Year 3—80 percent; Year 4—70 percent; Year 5—50 percent.

There are two kinds of subsidies available. The first is a Continuation Subsidy. When a line has been certified by the ICC for abandonment, the State, through the State Plan, may offer a Continuation Subsidy for up to five years. The ICC may require the line to be operated for that time. The second kind of subsidy is a Local Rail Service Subsidy. A Local Rail Service Subsidy Project may be undertaken on any line where there is an operating loss in accordance with the formula, but it is deemed by the carrier and the State that it is important for

the line to remain in operation. This Subsidy may be offered whether or not the carrier has petitioned for abandonment. A Service Subsidy must be originally requested for inclusion in a State Plan by the carrier.

Discussion. The Local Rail Service Subsidy Account retains the 3–R and 4–R Act concept of providing assistance to maintain local rail service that is financially draining to a carrier. However, it makes substantial changes in the existing program. For example, the Account is made permanent. Clearly the branch line problem will be with us for a long time. Also, the declining Federal match is not tied in the statute to calendar years, but to project years. A new project can be intiated at 100 percent Federal regardless of the year it begins. This is adopted from the suggestion put forth by Congressman Joe Skubitz in the House Subcommittee hearings. The Subsidy Account may not be used for rehabilitation (however, the Rehabilitation Account may be used for work on lines under subsidy. This keeps the operating subsidy pure and clearly identified.

All projects in the Subsidy Account will be identified as either a "Continuation Subsidy" or a "Local Service Subsidy". The Continuation Subsidy is the most similar to the 3–R and 4–R Act programs in that this subsidy is made available only to those lines approved for abandonment. The Continuation Project funds may be used for operating subsidy or for the purchase of a line of railroad approved for abandonment.

Our recommendation is that the funds be used sparingly for line purchase. As a general policy the carrier requesting the abandonment should be required to continue operation of the line through the life of the project. Once a shortline operator takes hold he will have a vested interest in keeping the subsidized line going no matter what its viability. Or, as William G. Mahoney of the Railway Labor Executives pointed out in House hearings, a "designated operator" can cease operations as summarily as be began them. This could also prove destructive.

Under any circumstances, we are adamently opposed to creating shortline and allowing trackage rights over abandoning carriers to make the shortlines whole. This would be bad for management, bad for labor and would result in confusion and a great deal of hostility on all sides. It could, in fact, lead to a kind of "state nationalization" where the State takes over operations of all lines with Federal money. Efficiencies of private enterprise operations would be lost and, such a move would be a large step toward real nationalization.

The newest aspect of the proposal is the Local Service Subsidy which may be made available, on a project by project basis, to lines not listed for abandonment but which cost the carrier to provide service to shippers. This idea is in concert with proposals in various House an Senate bills that allow aid to lines "potentially subject to abandonment." As FRA Administrator Sullivan points out the language "offers railroads an incentive to allow lines to deteriorate and become eligible for the program." Mr. Mahoney, in his testimony, states, "It appears from the various railroads' designations of lines potentially subject to abandonment that the branch lines and even some secondary main lines of the private railroad corporations will go the way of the passenger train." Implicit in what Mr. Mahoney is saying, and I think he is correct on this point, is that if we get lines into a potentially abandonable stream in the first place, even if just to qualify them for subsidy, we will then push on to abandonment if we don't get the subsidy in a kind of self-fulfilling prophecy.

A major concern to me is that as soon as we list a line as "potentially abandonable" it becomes a doomed line in terms of attracting new business. In fact, existing business may turn to truck or any other alternative as a matter of protection. Thus, if we can get abandonment out of the language we will be far better off from day one of the initiation of a Local Service Subsidy Project. Hopefully, an agreement between a carrier and State to enter a Service Project will be seen as a positive commitment to the future of the line rather than a last ditch effort to side track an abandonment.

This proposal assumes certain good-will between the State and the carrier in agreeing to a Local Service Subsidy Project. The carrier must request the subsidy from the State and will be expected to make a good faith effort to make the line viable during the life of the Project. However, if a carrier requests a Project Agreement, and the State refuses to enter into such an agreement providing a full subsidy, then the State may not oppose any subsequent abandonment petition for the line in question.

This proposal does not address the very important question of the ICC process leading up to a Certificate of Abandonment and eligibility for a Continuation Subsidy. That should be considered.

RAIL REHABILITATION ACCOUNT

Any rail rehabilitation project approved for inclusion in the State Plan may be funded through this Account. The maximum Federal share may be: Jobs—100 percent, Materials & Supplies—80 percent.

Discussion

This proposal does not limit the kind of work that may be undertaken in a Rehabilitation Project. Emphasis should be on branch line rehabilitation, but State would not be prohibited from moving in an area where there is a high public interest. The greatest need in Colorado, for example, may be for railroad relocation around a town or grade separation to make way for new unit coal service. In New Hampshire, branch line rehabilitation is most appropriate.

The formula for the maximum Federal match is different from the Subsidy Account. In rehabilitation there is no advantage to a declining Federal share. This proposal allows for two maximum Federal shares in Rehabilitation—100 percent for employment costs and 80 percent for materials and supplies.

The 100 percent jobs subsidy is based on the fact that the Congress has already created a high priority for public funding for jobs. During the last two years Railroad Jobs legislation passed both the House and the Senate by overwhelming margins. Only an inter-union dispute over who would get the work caused Congress not to press that legislation to final enactment. However, the New England Regional Commission has run its own railroad jobs program, and it works well. This year, Congressman led by Mr. Florio of New Jersey and Mr. Conte of Massachusetts and Senators led by Mr. Heinz of Pennsylvania have introduced new railroad jobs legislation and I am hopeful that it will be considered. However, there is no reason why that good and workable concept cannot be incorporated into this State administered program.

This proposal envisions a 80 percent Federal match for supplies and materials. While I am not wed to a specific percentage here it seemed appropriate to utilize the match available for UMTA capital projects. A Federal match that is lower will put rehabilitation projects out of reach for most States.

FUNDING FORMULA

Each State is entitled to an amount equal to the total amount appropriated, multiplied by a fraction whose enumerator is the "approved rail mileage with State subsidy" in each State Plan and whose denominator is the rail mileage for all States eligible for assistance. Each State would receive a minimum of 1 percent of the total appropriation.

"Approved rail mileage with State subsidy" for purposes of this formula is that mileage contained in a Subsidy or Rehabilitation Project for which the non-Federal share is at least 10 percent. No mile may be counted twice. As already indicated, before a Plan is approved by the Secretary, the non-Federal share must be identified.

Discussion

This formula attempts to give weight to States that have the greater problem and/or are willing to make the greater effort.

STATEMENT OF ERLE J. ZOLL, JR., VICE PRESIDENT, SEABOARD COAST LINE RAILROAD AND LOUISVILLE & NASHVILLE RAILROAD

Mr. Chairman and Members of the Committee, my name is Erle J. Zoll, Jr. I am Vice President of Seaboard Coast Line Railroad and Louisville & Nashville Railroad. This statement is filed on behalf of the following railroads, all of which are providing services for the National Railroad Pessenger Corporation (Amtrak) under contract: Baltimore and Ohio Railroad Company; Burlington Northern Inc.; Chesapeake and Ohio Railway Company; Consolidated Rail Corporation; Chicago, Milwaukee, St. Paul & Pacific Railroad Company; Illinois Central Gulf Railroad; Louisville and Nashville Railroad Company; Missouri Pacific Railroad Company; Norfolk and Western Railway Company; Richmond, Fredericksburg and Potomac Railroad Company; Atchison, Topeka and Santa Fe Railroad Company; Seaboard Coast Line Railroad; Southern Pacific Transportation Company, and Union Pacific Railroad Company.

I

The original Rail Passenger Service Act of 1970, in creating Amtrak, provided that Amtrak: "may contract with railroads or with regional transportation agencies for (1) the use of tracks and other facilities and (2) the provision of services * * *."

The act provided that if the parties failed to agree, the Interstate Commerce Commission could: "order (1) the provision of services or (2) the use of tracks or facilities of the railroad by (Amtrak) on such terms and for such compensation as the Commission may fix as just and reasonable, * * *."

In the beginning months of Amtrak's operation, criticism arose over the railroads' on-time performance of services for Amtrak. Hence on October 18, 1973, Congress enacted the Amtrak Improvement Act of 1973, designed to improve the provision of services by the railroads. The legislation provided:

"In fixing just and reasonable compensation for the provision of services ordered by the Commission under the preceding sentence, the Commission shall, in fixing compensation in excess of incremental costs, consider quality of service as a major factor in determining the amount (if any) of such compensation."

That is, Congress provided that whenever the Commission fixes the compensation which Amtrak is to pay a railroad for providing services, the basic compensation must reflect incremental costs, with any compensation in excess of incremental costs depending on the excellence of the service provided. The Conference Report on the 1973 Act said:

"The term 'incremental costs', as used by the conferees, is intended to provide a basic level of compensation to be paid a railroad for services provided. It is assumed that this basic level could be supplemented on the basis of quality of service."

It will be noted that this 1973 amendment to the basic act in no way touched on the subject of compensation for the use of tracks and other facilities. If and when the Commission fixed such compensation, Congress allowed the law to continue simply to direct the Commission to prescribe such compensation as was "just and reasonable." In *Amtrak and Texas Pacific Ry. Co. Just Compensation*, 348 ICC 645 (1976), the Commission recognized that incremental costs was the statutory guideline in fixing compensation for the provision of services and that it was not a guideline in the fixing of compensation for the use by Amtrak of a railroad's tracks and facilities.

This state of affairs would not be altered by Section 3(b) of S. 1793. The insertion of the word "all" immediately preceding the word "compensation" in the third sentence of Section 402(a) of the Rail Passenger Service Act would work no real change in the law for the reason that the sentence would continue to contain its present opening limiting clause, namely, "In fixing just and reasonable compensation for the provision of services ordered by the Commission under the preceding sentence,". The unambiguous restricted scope of the sentence cannot be overridden by any general presumption that a change in a statute is intended to have some purpose. Since the addition of the word "all" has no operative result, and since the stated rule of statutory construction might lead to speculation or confusion as to the result of inserting "all" before "compensation," we do not believe the change in language should be made.

However, on July 29, 1977, Mr. Paul H. Reistrup, Amtrak's President, filed a statement with the Subcommittee asking it to modify Section 3(b) so it would definitely make incremental costs the guideline for fixing compensation for the use of a railroad's tracks and facilities. We object to that. When the Commission fixes compensation for Amtrak's use of tracks and facilities, the law presently directs the Commission to require whatever compensation is in its judgment "just and reasonable." There is no reason for Congress to further circumscribe the Commission's discretion in fixing compensation. The only reason Congress fixed incremental costs for the provision of services was to create an incentive for the railroads to provide as good service as possible, a reason which has nothing whatever to do with Amtrak's use of railroad tracks and other facilities. Congress ought not to tell the Commission how to decide what is just and reasonable compensation for the use of a railroad's tracks and facilities.

II

Section 3(b) of S. 1793 also would add the following words after the word "compensation" in the same third sentence of Sec. 402(a): "including reasonable adherence to the fastest practicable operations schedule." The sentence would thus enjoin the Commission, in fixing compensation for the provision of services, in excess of incremental costs, to "consider quality of service as a major factor

in determining the amount (if any) of such compensation, including reasonable adherence to the fastest practicable operations schedule."

While this proposed change in Section 402(a) does not appear to be much of a departure from the present practice of the Commission under Section 402(a), it is probable that Amtrak would insist that the Commission, pursuant to the change, must impose "the fastest practicable operations schedule" in Section 402(a) proceedings as a condition to a railroad receiving meaningful incentives. The major problem concerns the meaning of the term "fastest practicable operations schedule". Amtrak might well contend that it means a schedule developed without regard to its effect on freight train operations and without consideration being given to the fact that faster passenger train schedules severely limit the capacity of a rail line and result in an increasing level of freight train interference. It might be contended that a Congressional mandate for the "fastest practicable operations schedule", coupled with the passenger train priority granted by Section 402(e) of the Rail Passenger Service Act, required the promulgation of passenger train schedules which do not take into consideration the existence of freight train operations and the public's stake in the fastest and most efficient freight train operations possible.

The basic agreement between Amtrak and the railroads requires that the schedules of Amtrak trains "give due regard to Railroad's speed, weight and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable interference with the adequacy, safety and efficiency of its other railroad operations." (Sec. 3.2) This eminently sound and sensible provision could be jeopardized by the proposed statutory change, which is fraught with danger and which has no basis in reason. We oppose its enactment.

III

In Mr. Reistrup's July 29 statement to the Subcommittee he suggests adding the words "progressively increasing" before the phrase "quality of service" in Sec. 402(a), so that the factor the Commission would have to consider in fixing compensation for the provision of services[1] over and above incremental costs[2], would be not "quality of service", but "progressively increasing quality of service". This could not help but be counterproductive. A railroad which went all out to provide the best possible service would find that it next had to provide even better service to continue to earn incentive compensation! What Mr. Reistrup suggests would be a spur to improving service just a little at a time, and even then it would reach a point where once the service was perfect and the railroad could no longer better its performance, it could no longer qualify for incentive compensation. The statute is adequate as it reads today.

STATEMENT OF WILLIAM J. TAYLOR, PRESIDENT AND CHIEF OPERATING OFFICER, ILLINOIS CENTRAL GULF RAILROAD CO.

Mr. Chairman, Members of the Committee, my name is William J. Taylor. I am President and Chief Operating Officer of Illinois Central Gulf Railroad Company (ICG), with general offices at 233 North Michigan Avenue, Chicago, Illinois.

ICG operates in 13 Midwestern states, extending from the Great Lakes on the north to the Gulf of Mexico on the south. Our main north-south lines extend between Chicago, Illinois, and New Orleans, Louisiana, and Mobile, Alabama. We have other lines extending to such points as Baton Rouge, Louisiana; Birmingham, Alabama; Louisville, Kentucky; Indianapolis, Indiana; St. Louis, Missouri; Kansas City, Missouri; Omaha, Nebraska; Sioux City, Iowa; Sioux Falls, South Dakota; Albert Lea, Minnesota; and Madison, Wisconsin. At the present time, ICG operates 9,044 route miles.

In May of this year, pursuant to the so-called "4-R Act" which became effective February 5, 1976, and regulations of the Interstate Commerce Commission there-

[1] And, as stated above, Mr. Reistrup would also include compensation for the use of tracks and other facilities.

[2] Mr. Reistrup would make the section read: "actual, reasonable and necessary incremental costs that are demonstrated to be incurred because of the existence of Amtrak operations." He does not explain why it should be necessary for the railroads to be required to demonstrate the reasons behind their expenditure of each item of incremental cost. There is no such necessity and it would be a terribly burdensome requirement.

under, the railroads in this country were required to identify, on system diagram maps, lines which were subject to abandonment applications on file with the Interstate Commerce Commission (Category 3), lines subject to abandonment applications within three years (Category 1), and lines which are potentially subject to abandonment (Category 2).

At the present time, ICG has applications pending before the Interstate Commerce Commission to abandon 21 different line segments totaling about 542 miles. These applications were filed prior to promulgation of the new abandonment regulations under the "4–R Act." Later this year we expect to file applications with the Interstate Commerce Commission to abandon 15 additional line segments, totaling about 629 miles. These 15 branchlines are identified on our system diagram map as lines subject to abandonment applications within three years (Category 1).

All of these lines, which are subject to pending abandonment applications or for which abandonment applications will be filed in the future, need substantial rehabilitation. We believe that the Interstate Commerce Commission should permit their expeditious abandonment, as revenues simply are not adequate to warrant continued operation. It is more than likely that a few of these ICG branchlines will be deemed essential by the states and so designated on a state rail plan. These would likely be cases in which sufficient traffic would cover most of the out-of-pocket operating expenses, yet the revenues are not sufficient for the railroad to spend its limited funds on the lines' rehabilitation. In these instances, the states determine that the expenditure of public funds for rehabilitation will ensure that needed operation continues for some time in the future. (The states, of course, are required to carefully balance these decisions against those pertaining to lines with so little traffic that upgrading would not be justified regardless of who paid for it.)

Under the present law, funds for continuation subsidies, including rehabilitation, are not available until the Interstate Commerce Commission has approved an abandonment application and the state has designated the line as a recipient of part of the state's share of subsidy money. S. 1793 would remedy that situation by providing funds for rehabilitation and continuation subsidies, without the burden of the long delays necessary to obtain approval for abandonment.

When an abandonment application is filed, management has made the decision that the line will not support necessary expenditures for rehabilitation, and thus, while an abandonment case is pending before the Interstate Commerce Commission, it is natural to make only such expenditures as are absolutely essential to keep the line in operation under minimum standards until the abandonment is approved.

Political and economic disruptions often occur when an abandonment application is filed. Industry is not willing to expand a plant or locate a new facility in an area with the knowledge that rail service may be discontinued. If a branchline is deemed essential and is to be preserved pursuant to a decision of the state, reflected in its rail plan, every effort should be made to avoid these disruptions. S. 1793 would accomplish this objective by providing funds to these lines where a state determines such expenditures are necessary, without requiring the lengthy abandonment application process. It should be emphasized, however, that if rehabilitation of a branchline is to be accomplished through public funding, then upon completion of the work, the track must be in a condition materially above the minimum requirements set forth in the FRA Class I track standards. For satisfactory operating performance and a possible future return to profitable operation, the track should meet a 30-mile-per-hour standard.

S. 1793 would also permit a railroad to make a proposal to a state for a continuation subsidy for a particular line in lieu of abandonment, and the state would be given the right to make the decision whether a continuation subsidy would be made. If the state decides that continuation of a line is not warranted, the railroad would be permitted to obtain abandonment approval without delay.

The provision for continuation subsidies, without obtaining an abandonment approval, has the advantage of offering improved and continued service to the public during the period that an abandonment application would otherwise be pending before the Commission. However, S. 1793 would limit the contribution subsidy to just 90 percent of the difference between the revenues attributable to the line and the avoidable cost, plus a reasonable return, which could very well cause a railroad to decide to proceed with an abandonment case before the Commission so as to be entitled to 100 percent of its avoidable costs, plus a reasonable return.

Section 2(f) of S. 1793 should be amended so that rail service continuation payments would cover 100 percent of the difference between the revenues which are attributable to the line of railroad and the avoidable cost of providing freight service on the line, in lieu of 90 percent as the bill is now written.

It would also be desirable if a railroad proposal to a state for a continuation subsidy could include a proposal for funds for rehabilitation if there was not already an agreement for rehabilitation of the line pursuant to Section 2(d) of S. 1793. In addition, service continuation subsidies should include amounts needed to maintain the track in the future to meet FRA Class II standards as the minimum.

For the successful implementation of S. 1793 or any branchline rehabilitation program deemed essential by state and federal authorities, adequate funding must be made available for sensible utilization by the states. Without the necessary capital, a fine concept may never be fulfilled.

S. 1793 is sound in principle, and the Illinois Central Gulf believes it would provide a strong foundation for improving branchline service.

SYNOPSIS OF STATEMENT PREPARED ON BEHALF OF HILLSDALE COUNTY RAILWAY CO., INC.

Hillsdale County Railway Company, Inc. ("Hillsdale"), operates approximately 55 miles of rail freight service under a rail service continuation subsidy (§ 304 (c) & (d), of the RRR Act) RRR Act, as amended and provides such service in southern Michigan and northern Indiana. It started operations on April 1, 1976 as a "designated operator", authorized by the states of Michigan, Indiana, and by the Interstate Commerce Commission.

Hillsdale desires to call attention to the fact that the RRRR Act does not include a "designated operator" category for subsidized rail freight service, such as the RRR Act contained in § 304 (c) & (d) ; RRR Act, as amended and further Hillsdale notes that the RRRR Act also failed to provide for a management fee for such designated operator.

Because of the above oversight, Hillsdale feels that Congress may be inadvertently frustrating the policies and purposes of the RRRR Act as set forth in the very first section (§ 101 (a) and (b)), and may in fact be denying the revitalization and future of rail freight services in a local region, wherein such services need to exist.

For example: Suppose a solvent carrier desires to abandon a portion of its service. In that event, the RRRR Act, as is presently written, allows a subsidy to be given, to the solvent carrier, to keep the carrier on the line. But suppose further that the carrier does not want to continue services on that line under any circumstances and it does not want to be responsible for receiving, accounting for and using subsidy moneys. In addition, suppose a new "designated operator", endorsed by local shippers and the state, desires to provide rail freight service, but needs accelerated maintenance funds (rehabilitation funds) to bring the track and related facilities to FRA Class I (10 mph) standards required to operate; or it needs a limited subsidy until it can make the line viable, at which time it would be in a position to purchase the line and operate it without a subsidy.

Under those circumstances, or any variations thereto, rather than forcing a solvent carrier, via a subsidy, to stay on the line it desires to abandon, the RRRR Act, Title VIII, and other applicable sections, should be amended to allow (upon ICC approval) the carrier to abandon, assuming that there exists another entity which can provide services on the line and could qualify as a "designated operator" or such other designation as is appropriate.

The funds for continuation and revitalization of service in a local area where service is needed, could then be authorized, to the designated operator, including a reasonable management fee (as it is in the RRR Act) and the solvent carrier could streamline its obligations and be relieved of further responsibility on the line.

The Act unfortunately does not cover the above situations, and Hillsdale recommends that the RRRR Act be amended to include such contingencies.

Hillsdale believes that the above circumstances, or variations thereon, will occur again and again all across different parts of the country, and unless this problem has been thought out, rail services may in fact not be revitalized and the purposes and policies of the Act will have indeed been frustrated.

There is ample opportunity at this time when the implementation of the Act is still young, to correct these inadequacies and to allow the funds to be properly allocated.

ERIC D. GERST, Esquire,
General Counsel for
Hillsdale County Railway Co., Inc.

STATEMENT OF EDWARD G. JORDAN, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, CONSOLIDATED RAIL CORP.

A number of significant amendments are contained in the bills which are the subject of this hearing. I would like to address only those that would directly affect Conrail.

1. The primary subjects of these amendments are the federal rail service programs established in the 3R and 4R Acts. We are most concerned that these programs be further improved. However, rather than address specific amendments, I would like to discuss briefly our view of the existing program and to set out the principles we believe should govern any changes the subcommittee may wish to make in those programs. As a whole, these abandonment program amendments raise a major railroad policy issue. If this issue is clearly resolved by the Committee in this Congress, many of the obstacles presently hindering the proper allocation of responsibility for the operation of marginal rail services could be overcome.

Traditionally, railroads have been permitted to discontinue services and abandon lines only after the Interstate Commerce Commission found that discontinuance or abandonment was required by the public convenience and necessity. That vague standard, and the fact that the burden of proving the need for eliminating service is on the railroads, have led to a considerable amount of protracted litigation. For a time the process became so difficult that railroads hestitated to propose discontinuance of money losing services, except when the costs of maintaining service so far outweighed any public or private benefits that the Commission was almost certain to permit abandonment.

The railroads have urged continuously that the abandonment standard be more clearly defined in terms of railroad costs and revenues. Those who could be affected by discontinuance of losing services have argued that the standard be as broad as possible and that it reflect certain unquantifiable social effects of discontinuing service which they argue should mitigate against discontinuance.

The railroad's difficulties were eased moderately by the passage of the 3R and 4R Acts. In these Acts, Congress established a program to subsidize service over lines the Commission found eligible for abandonment. The availability of subsidies to continue service for social purposes seems to have led the Commission to give more weight to the effect of losses on railroads and to permit more abandonments where railroad are losing money.

Despite these changes, any railroad attempting to discontinue service still must face prolonged and difficult adversary proceedings. During these proceedings, the railroad and the affected public are faced with uncertainty as to the future of the line, the future of jobs provided by the railroads, and the stability of the economy of affected communities. This uncertainty is bad for business and bad social policy.

We at Conrail believe it is time to end the uncertainty and the adversary relationship surrounding decisions about continuing losing railroad services. We recognize the social desirability of maintaining rail service in many areas where railroad economics dictate discontnuance. These services can achieve the same federal transportation goals that federally subsidized farm to market roads and city street construction activities achieve within the federal aid highway program. These goals can not be achieved if a subsidy program is not sufficiently permanent that shippers can rely on maintenance of service. Any revised program should take steps to ease the present year to year economic uncertainty.

We do not believe it is good public policy to require railroads to subsidize the operation of losing lines. And we are opposed to proposals for a further moratorium on abandonments which will lead to more uncertainty for shippers and place an even greater economic burden on the railroads. The costs of maintaining economic services are social costs which should be paid by society.

Where an adequate subsidy is available, Conrail encourages maintaining socially desirable freight services. In fact, we believe business benefits may accrue if these lines are operated with the support and cooperation of all affected parties.

If an adequate subsidy is not provided by affected parties, we believe a railroad acting in good faith should be able to discontinue losing services—without the additional burden of several years of litigation.

Certain provisions of S. 1793 would permit a railroad to help subsidize losing lines and would permit abandonment where a state chooses not to cooperatively subsidize losing service. While we do not advocate any change in the Congressional policy prohibiting cross subsidization, these provisions may suggest a way out of the present inefficient, adversary relationships that now marks the determination of responsibility for the operation of losing branch lines services.

However, as now drafted, these proposals may also create uncertainty for affected parties—for shippers, rail labor, communities and state agencies. We recognize the concerns others have about this proposal. We have met with many of the interested parties in hopes of designing a program acceptable to all. We will continue these discussions and hope that by working with the committee we will reach accommodations.

2. Another major subject addressed by these bills is the continuance and extension of commuter passenger service by Conrail. S. 1890, introduced by Senator Williams addresses to problems. The first is the need for Conrail to be assured that if it extends new commuter services it will have the ability it now has with respect to existing commuter services to abandon service is a subsidy payment is not made. Conrail is generally willing to extend commuter services under these conditions. However, we have certain technical suggestions which we believe will improve Senator Williams' bill by insuring we do not suffer losses from these new services. With your leave, we will submit these in a separate proposal to the subcommittee at a later date.

3. The second problem addressed in S. 1890 is that Conrail must now operate commuter services pursuant to subsidy agreements where private insurance is not available to cover certain levels of catastrophic loss. Congress intended that Conrail not cross-subsidize the operation of commuter rail services; and, strictly interpreted, the commuter service provisions of the 4R Act require the states to bear these costs. However, Certain States' laws and constitutions prohibit those states from accepting contingent liabilities. Conrail is presently operating these services, but is unable to secure insurance for losses up to $1 million and over $50 million. Since full insurance is not available to Conrail, we are unable to define the extent of the States potential liabilities. The states are unable to obligate themselves to pay unknown costs. Conrail and its rail passengers have no assurance that the states can cover the losses in case of catastrophic loss. Although the chances of an accident costing over $50 million are extremely slim, the fact remains that there is an element of risk. Should such an accident take place its costs could certainly be avoided were commuter services discontinued. Conversely, If Conrail were to accept the risk, it would be violating Congress' prohibition of cross subsidization.

Neither Conrail nor the commuter authorities nor the states can now provide adequate guarantees to the riding public that they could cover all the costs of a possible catastrophic accident. Conrail does not have the financial resources to cover uninsured losses and the commuter authorities may not either. The states have assured Conrail they will use their efforts to assume the risk of this contingent liability. However, in order to fully ensure that commuters can recover for catastrophic losses, we believe that the Federal Government which requires us to operate these services should absorb as social costs any uninsurable losses which the states or local or regional transportation authorities are unable to guarantee.

S. 1890 provides that the United States Railway Association would indemnify Conrail or a State (or a local or regional transportation authority) for uninsured losses resulting from the operation of commuter services if the Rail Sevices Planning Office found that Conrail had made good faith efforts to secure insurance but had been unable to do so. S. 1890 would limit the government's potential liability ot $50 million per accident.

4. Another major amendment which would directly affect Conrail is section 3(B) of S. 1793. This amendment to the Rail Passenger Service Act appears to be an attempt to override a recent decision by the Interstate Commerce Commission. The ICC found the Rail Passenger Service Act required that Amtrak pay its share of the cost of providing facilities for intercity rail passenger service regardless of the quality of service provided by the railroads. Payment of certain common service costs is still contingent upon a certain level of service quality. Inasmuch as Conrail and the other railroads must pay certain common

facilities costs which are unrelated to the quality of service, we believe that the ICC decision was the correct one. Only payment of certain common service costs should be related to the quality of the services we provide Amtrak.

5. Finally, Section 4(f)(2) of S. 1793 is intended to cure problems created by the lapsing of life and medical insurance policies of retired employees of Conrail's predecessor railroads. This same provision was the subject of recent House hearings on H.R. 5646. Our detailed testimony on that provision listing several suggested changes is attached to my statement. We are in accord with the goal of the provision, but question whether the approach could be unconstitutional.

The press release announcing these hearings indicated that this would be the forum for discussing the implementation of the Rail Revitalization and Regulatory Reform Act of 1976 and general questions of railroad regulatory reform. I have not generally addressed these issues today. Discussion of these issues did not seem appropriate in light of the content of the bills before the Committee.

We would, however, very much appreciate an opportunity to present our views to the Committee regarding the implementation of the 4R Act and the regulation of the railroads by the Interstate Commerce Commission. We urge the Committee to hold oversight hearings late this Fall on the reports by the ICC and the Department of Transportation and a Report which Conrail will submit independently on the implementation of the 4R Act. Much more can be done to improve the Nation's railroad and general freight transportation policies and we hope this Committee will take steps toward that improvement in this Congress.

Thank you for this opportunity to appear before you today. I welcome any questions you may have.

TESTIMONY OF CONRAIL ON H.R. 5646 BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE, U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. Chairman—

Conrail is grateful for the opportunity to present its views on H.R. 5646, a bill intended to take care of problems created by the lapsing of life and medical insurance policies of employees of the bankrupt railroads who retired prior to April 1, 1976.

Conrail recognizes the hardships which resulted from the lapsing of those policies. We also recognize the difficulties this subcommittee has encountered in seeking a means to alleviate those hardships. Above all, we recognize the concerns of those representing the retirees who, having been rebuffed by the courts, have turned to Congress for assistance.

With those recognitions in mind, we therefore appear today with several observations.

Our first comment relates to the present legal status of the retirees' claims, against the bankrupt estates, that such policies, and their premiums, are obligations of the bankrupt estates.

The bill would treat the amounts needed for the premium payments as valid administration obligations of the estates.

This treatment would be inconsistent with the holding of the Sixth Circuit Court of Appeals in the EL litigation on retiree life insurance. This inconsistency could result in a constitutional challenge to this provision, unless the legislative reports make it clear that the estates' obligation to repay the 211(h) loans would be subject to a determination that, under prior law, the benefit obligations were valid claims against the estates. If the determination were negative, in a particular case, the estate would not be liable; but Conrail would still be forgiven for the 211(h) loan in accordance with existing 211(h) provisions.

Because the bill does not specifically relate back to the pre-conveyance period, an inference might be drawn that a new liability was created by the legislation—instead of recognition of an existing liability. Such an inference would suggest that the provision is constitutionally infirm.

Our second comment is to the fact that the bill would permit Conrail to obtain reimbursement for the premium payments under Section 211(h).

This provision necessarily requires long-term reliance not only on the continuance of that program but also on the adequacy of the maximum loan authorization under that program. Under the current administration of the program, which depends upon the availability of cash repayments of 211(h) loans by the Penn Central Trustees to replenish that loan authorization, Conrail's entitlement to reimbursement for employee-related 211(h) payments is exposed to the long-

term risk that such cash repayments will be delayed or not made. The retiree insurance premiums would increase the magnitude of this long-term risk.

The total amount of the premiums paid over the years will be much greater than would be an amount, which might also be authorized, to purchase the coverage for all years for a single initial premium.

Third, we offer the comment that the bill, in the form introduced, would require Conrail to maintain in effect insurance policies providing medical or life insurance to persons described in Section 211(h)(1)(A)(viii) of the Rail Act.

The reference to Section 211(h) would be too broad in that it would include active employees and post-conveyance retirees. These persons do not have, as a matter of contract law, any pre-conveyance accrued rights to coverage under medical and life insurance policies in their retirement years. Conrail does not maintain such coverage for its non-agreement retirees. The bill as presently written might suggest that these persons do have such rights.

The bill further suggests that the insurance policies are still in effect, and that Conrail would be able to pick up the premium obligations as they become due. It is our understanding that in at least two cases (EL and CNJ), the insurance coverage has been terminated. Due to the limited size of the retiree groups in those cases, it may be extremely difficult to reinstate that insurance coverage. The bill should perhaps permit flexibility to obtain substitute coverage or, failing that, to provide for the benefits through a trust arrangement.

Provision should also perhaps be made to redress claims of those retirees whose insurance coverage was permitted to lapse by the bankrupt estate trustees.

We have prepared a redraft of the bill which the subcommittee may find useful. It seeks to resolve the problems discussed above. The redraft would:

Extend only to pre-conveyance retirees.

Give Conrail flexibility in determining the most feasible way of providing for the benefits, including the possibility that the benefit liabilities could be folded into its own group plans for active non-agreement employees.

Extend to Conrail, if insurance coverage is or becomes unavailable, the ability to create a tax-exempt trust with the funds that otherwise would be used to purchase a single premium insurance policy for all remaining years of coverage.

Extend to individuals, whose benefit claims remain unpaid due to a post-conveyance lapse in their insurance coverage, the right to be paid by Conrail with 211(h) funds.

Protect Conrail by the provision for immediate 211(h) funding for all remaining benefit liabilities. This would reduce the risk to Conrail arising out of a long term reliance on the availability of 211(h) funds and the repayment promises of the Penn Central Trustees.

A copy of our suggested redraft is attached.

We would close this testimony with one additional observation. In our past transactions relating to 211(h) loans, we have been assured our administrative costs. We would hope the subcommittee might consider amending the bill to provide the same assurances.

Again, I want to thank the subcommittee for giving us the opportunity to comment on this measure.

SUGGESTED REDRAFT

"(B) The Corporation shall, through the purchase of insurance or otherwise, provide medical and/or death benefits to individuals, who retired prior to April 1, 1976 from service with a railroad in reorganization, of the type and at the same or approximately the same levels provided by such railroad and in effect with respect to such individuals immediately prior to April 1, 1976. The Corporation also shall assume and pay amounts needed to satisfy claims of such individuals or their personal representatives for such benefits (but not for reimbursement of premiums paid by any person) arising during the period beginning April 1, 1976 and ending on the date coverage is provided by the Corporation pursuant to the preceding sentence if such benefits were not paid by an insurer due solely to the lapse of insurance coverage during such period. The Corporation shall be entitled to a loan or loans pursuant to Section 211(h) of this Act in amounts sufficient to provide for the payment of all such benefits including those not yet due. The amounts needed to fund such benefits on a single, lump-sum premium basis as of the date of such loan or loans shall be deemed to be sufficient. For purposes of such Section 211(h) and notwithstanding any other provision of Federal or State law, such amounts shall be deemed to be expenses of administration of the respective estates of the railroads in reorganization, due and payable as of April 1, 1976."

96-474—77——15

STATEMENT OF BARBARA ADAMS, LEGISLATIVE VICE-CHAIRPERSON, ON BEHALF OF THE RAILROAD TASK FORCE FOR NORTHEAST REGION, INC. BEFORE THE SUBCOMMITTEE ON TRANSPORTATION AND COMMERCE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE OF THE UNITED STATES HOUSE OF REPRESENTATIVES

I wish to thank the members of this Subcommittee, and particularly their Chairmen, for allowing me the opportunity to appear here today.

My name is Barbara Adams and I am the Legislative Vice-Chairperson for the Railroad Task Force for the Northeast Region, Inc., a group founded by former Governor William W. Scranton of Pennsylvania over five years ago. I have been working for the past three years with the shippers, labor unions, community leaders and other interested citizens of the twenty-two county region of Northeastern Pennsylvania represented by the Task Force. The purpose for the Railroad Task Force and its task since its founding has been to preserve rail freight service to Northeastern Pennsylvania, an area that became depressed because demand declined towards the middle of the century for the single commodity at the base of the region's economy—ironically, a fossil fuel, anthracite coal. In an effort to revive its economic base, the region began to capitalize on its railroad and general transportation system using this as an attraction to conduct extensive industrial development campaigns. The fruits of twenty years of industrial development and public investment, are a large proportion of the 2,500 jobs in 58 companies generating an annual payroll of over $18 million located along 13 branch lines, in the Task Force Region excluded from ConRail and presently under subsidy in order to continue operation.

I should like to highlight the most significant considerations to northeastern Pennsylvania in the legislation before this Subcommittee today; that is, the importance of maintaining branch line operations subsidies and rail roadbed rehabilitation or accelerated maintenance funds at the 100 percent level until September of 1978 as proposed in H.R. 6739, introduced by Mr. Staggers. It is encouraging to note that in most of the bills under consideration the importance of extending rail service continuation subsidies at 100 percent is recognized.

No doubt this clearly indicates that not only the members of this Subcommittee, but many members of Congress, understood the economic justification for the 100 percent subsidy for branch lines excluded from the reorganized northeast railroad system.

The results of a recent study announced by the Pennsylvania Department of Transportation Secretary indicate that 55 million dollars in payrolls were preserved by the continued operation of branch lines in Pennsylvania. The direct unemployment cost of the loss of these jobs for one year would have been 26 million dollars. Eight million dollars in social security payments would have been lost to the federal government should these jobs have been eliminated. Thus, the economic benefit of retained railroad service is over thirteen times the $6.5 million in rail service continuation subsidies expended.

Secondly, the actual cost of the rail service continuation subsidy program is much less than originally anticipated by Congress. The Rail Reorganization and Regulatory Reform Act authorized $360 million for rail service continuation subsidies. The first year of subsidy cost $70 million. Assuming expenditures continue at the same rate, the 100 percent subsidy can be extended until September of 1978 and then percentages decline as H.R. 6739 projects until 1982 with no additional authorization over the original $360 million. Therefore, in addition to the economic benefits of the 100 percent rail service continuation subsidy, the continuation of the project seems quite feasible under present planning.

ConRail too benefits from the local rail service continuation subsidies as ConRail provides the vast majority of the service over branch lines excluded from its system under operating agreements that have netted ConRail about $1.75 million of income, frankly an unusual feature of one of ConRail's operations. Furthermore, in the Railroad Task Force Region during the first year of subsidy, 3,500 cars were originated and terminated on the 13 branch lines excluded from ConRail by the reorganization planning and approximately 13,000 cars were generated statewide in Pennsylvania. Without the branch lines under service through operating subsidies at 100 percent, all of the mainline revenues from this traffic would have been lost to ConRail. Assuming freight revenues of $300 per carload, this traffic was worth $4 million to ConRail from Pennsylvania lines alone.

Finally, there are adverse strategic implications to reducing the rail system in an area to a point where there are no alternative routes to be used in times of war or natural disaster. The Johnstown flood has most recently indicated the importance of retaining in serviceable condition alternate rail routes.

While you may agree that the economic benefits of the rail service continuation subsidy program compares favorably with its costs, there remains the question of why the rail service continuation subsidy program should be continued at the 100 percent level until September of 1978 instead of at 90 percent. There are two principal reasons for this:

1. As startling as this statement may seem, the difference between a 100 percent rail subsidy and a 90 percent rail subsidy is more than 10 percent. Aside from the cost differential involved, there is a concomitant shift in the party responsible for providing the subsidy. No private shipper can afford to commit himself to providing 10 percent or a proportion thereof of a subsidy whose extent is unknown. The one-year period of subsidy at 100 percent was designed to avoid industrial displacement by permitting shippers to negotiate among themselves and with a carrier to continue rail service. Nevertheless, throughout this period ConRail too was adjusting to the new rail environment with the result that actual cost and revenue data to enable planning to meet the 90 percent level was unavailable. In addition to making impossible the concluding of subsidy agreements, this has severely restricted the ability of a state and a shipper and a carrier to evaluate and adjust services to meet shipper needs. Therefore, the 100 percent operating subsidy needs to be extended in order that it perform the function it was originally designed to do.

2. The second reason for the extension of the rail service continuation subsidy is that the process of the FRA in formulating regulations to guide the distribution of funds to provide accelerated maintenance on lines badly deteriorated from years of neglect by the bankrupt carriers consumed most of the entire year for which subsidy for accelerated maintenance at the 100 percent level was available. FRA compounded the problem by ruling that subsidies for accelerated maintenance would be considered spent during the year when the work is accomplished, rather than when the contract is let. This effectively precluded any utilization of the accelerated maintenance funds at the 100 percent subsidy level and therefore made a mockery of the structure of that program. Therefore, in order to provide one year of 100 percent subsidy of accelerated maintenance for branch lines, the 100 percent level of funding of rail service continuation subsidies must be continued.

The benefits of extending rail service continuation subsidies at the 100 percent level have merited only the support of the sponsors of the bills before this Subcommittee, but also support throughout the Northeast Region of the United States. I have brought with me copies of letters from the Departments of Transportation of twelve states in support of the extension of rail service continuation subsidies for rail operations and accelerated maintenance at a rate of 100 percent. Departments in New York, Virginia, Delaware, Pennsylvania, Connecticut, Michigan, West Virginia, Maryland, Rhode Island, Ohio, Vermont, and Massachusetts applaud the concept of the 100 percent subsidy and deplore the inevitable delays that have restricted utilization of the program.

I would like to end by briefly commending two excellent points in H.R. 8393 before you and to point out a significant omission of all the bills. The Railroad Task Force for Northeast Region, Inc. strongly supports the use of proportionate mileage qualifying branch lines as a basis for determining subsidy allocations to the states. Secondly, the Task Force applauds the recognition of the effectiveness of trackage rights as a flexible means to enable states municipalities to continue operation of subsidized service.

The significant omission from the legislation is a means to make effective Sections 809 and 810 of the Rail Revitalization and Regulatory Reform Act. These sections provide for the establishment of rail banks, the fossil fuel rail bank to have been established by August of 1976. The Railroad Task Force believes that ConRail and Amtrak should be directed to bank any line in the Region, presently included within the ConRail or Amtrak systems or operated under subsidy, for which there is a foreseeable future need.

Thank you for your consideration of these points.

New York Harbor Railroad Operations—Essential Component of the Final System Plan

A Report to the United States Railway Association by New York State Department of Transportation, New Jersey Department of Transportation, City of New York, Tri-State Regional Planning Commission, The Port Authority of New York and New Jersey.

This report has been prepared by representatives of several major public agencies in the New York-New Jersey Metropolitan Area in an effort to assist the U.S. Railway Association in dealing with the complex problem of New York Harbor carfloat operations in the development of the USRA Final System Plan. The report grows out of serious concern of the New York and New Jersey Departments of Transportation, the City of New York, the Tri-State Regional Planning Commission and The Port Authority of New York and New Jersey with the inadequate treatment of this subject by the USRA in the Preliminary System Plan.

It is the purpose of the five public agencies to provide constructive assistance to the USRA in order that the critical nature of these operations be fully understood by the Association. It is our conviction that railroad carfloating services are an essential element in the economy of the bi-State Port District and that the Final System plan must recognize the need to preserve and strengthen these railroad services.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

The Joint Agency Committee has developed a proposed plan for New York railroad operations comprising the following major features:

All future harbor carfloat operations to be handled by agreements between the private and solvent Booklyn Terminal Railroads and the restructured trunkline railroads.

Floatbridge and supporting yard facilities now in New Jersey should be consolidated at Greenville in Jersey City and be operated by ConRail or jointly by ConRail and competitive railroads under the Final System Plan. The physical facilities should be rehabilitated with Federal funds under the Rail Reorganization Act.

The Chessie floatbridge should be maintained at St. George.

The Bay Ridge line in Brooklyn should be rehabilitated under the Act for direct overland service to the Brooklyn waterfront for traffic to be handled by New York Dock Railway to and from the north.

Existing agreements on rates and divisions between the Brooklyn Terminal Railroads and the restructured trunkline carriers should be preserved as specified in the Act.

Provision should be made for preserving the floatbridge facilities of the Long Island Railroad in Long Island City.

Largely as a result of rapidly escalating tariffs, railroad lighterage in New York Harbor has been seriously eroded. The Committee recommends that railroad lighterage be continued unless satisfactory alternatives can be provided. It recommends that the USRA develop alternates for the handling of those special commodities which are essential to the shipping industry and to the operation of a number of industries in New York Harbor.

Floating operations in New York Harbor are essential to the economy of the bi-State area and must be maintained to avoid circuitous routings which would have serious economic and other disbenefits to shippers. They should not be considered as light-density lines because of the volume and variety of services handled and because they are key interline connections between railroads in a regional railroad network. As such, these harbor services should be included in the Final System Plan.

The Joint Agency Committee has prepared estimates of future volumes of carload traffic across New York Harbor. It is estimated that by 1979, more than 50,000 carloads of freight representing more than 2,000,000 tons annually will be handled under the proposed plan.

REGIONAL IMPORTANCE OF COMPETITIVE RAIL SERVICE AND IMPROVED CARFLOAT OPERATIONS

The Northern New Jersey-New York Metropolitan Area contains a population of over 16 million people. The area contains over 40,000 manufacturing plants

employing more than 1,600,000 persons. This metropolitan area is the premier manufacturing center of the United States as measured by employment, the number and variety of industrial plants, the value of production and the level of capital expenditures for new plants and equipment. The value of shipments by manufacturers in the metropolitan area was more than $50 billion in 1973.

In addition, this metropolitan area represents the largest consuming area in the United States, as measured by any economic yardsticks. The most recently available census data reveals that the 17-county New York-Northern New Jersey Metropolitan Area had 5,320,000 households with regional personal income of $83.1 billion and estimated personal consumption expenditures of $62.0 billion annually. Annual retail sales in the 17-county area amounted to $31 billion.

COMPETITIVE RAIL SERVICES

It is obvious that rail freight service to the metropolitan area is a vital part of its economy. There is no intent in this report, and indeed no interest, in advocating impractical costly rail services for continuation by ConRail. On the other hand, the need for truly competitive railroad service is of overwhelming importance to the New York-New Jersey Region.

The key competitive requirements, generally recognized in the Preliminary System Plan, include the following:

1. The region must be served by two competing railroads on the east-west trunkline axis—preferably ConRail and Norfolk & Western.
2. The region must be served by two competing railroads on the northeast-southwest seaboard axis—preferably ConRail and the Chessie System.
3. The Poughkeepsie Bridge route must be open to ConRail and its principal competitors to assure competitive rail service for New England and southern New York State east of the Hudson River including New York City.
4. If competing rail operations cannot be accomplished from among the solvent railroads, then the Final System Plan should establish MARC–EL to provide effective competition for ConRail.

CARFLOAT OPERATIONS ESSENTIAL

The focus of the metropolitan area is on New York Harbor which directly or indirectly affects each of the almost sixteen million residents of the region. New York Harbor is formed primarily by the estuary of the Hudson River which extends about 150 miles inland to Albany and Troy, New York. The estuary is wide and deep and has been a formidable barrier for the private railroad system. Only one railroad company privately financed a crossing at New York and this was built more than a half century ago by the Pennsylvania Railroad for passenger services. Efforts were made in 1935 to construct a rail freight tunnel under Upper New York Bay from Jersey City to Brooklyn, but to date, such a crossing has been economically prohibitive. Thus, there is only one freight railroad crossing of the Hudson River south of Albany and this is the Poughkeepsie Bridge about seventy-five miles north of New York.

All of this has meant that the railroads have resorted to marine operations of several kinds to serve harbor points and to interchange freight cars. The main freight line along the Atlantic Seaboard formerly passed through New York Harbor via the Greenville-Bay Ridge float line. The Poughkeepsie Bridge route handled slightly less traffic than the float route and provided an all-rail, all-weather main line. Both of these routes have been effectively closed by the Penn Central since 1969. The float line was eliminated immediately on acquisition of the New Haven line by the Penn Central. The bridge line was dried up over the five years from 1969 to May 1974.

The Preliminary System Plan of the USRA (Vol. II, p. 363 and Figure 4, p. 364) describes the need for carfloating, but the USRA conclusions on how the system should be maintained and strengthened are a source of great concern to New York-New Jersey interests. A local harbor float movement from the New Jersey to the New York shore saves over 300 miles of circuitous running via Selkirk Yard (Albany) for traffic to and from the south. This preposterous situation would be improved by restoration of service over the Poughkeepsie Bridge as recognized by USRA.

Harbor carfloat operations will continue to be essential in New York Harbor, particularly for the heavy volume of traffic moving between New York City and the south and southwest. Moreover, the volume of traffic handled is likely to expand appreciably under the plan of operations proposed by this Joint Agency Committee. The plan and traffic forecasts are fully developed in later sections of this report.

HISTORY AND CURRENT STATUS OF RAILROAD OPERATIONS IN NEW YORK HARBOR

Railroad floating operations in New York Harbor go back many years. The form of these operations has changed significantly over the years as a result of railroad mergers,, railroad routing policies, cost and rate structures and the like. The marine operations in service today, together with a brief historical background, are discussed in this section of this report.

Rail marine lighterage is a harbor service frequently provided by railroads that enables freight to move via water to different parts of the harbor that may not be readily accessible by direct rail connections. In lighterage service, the goods shipped are transferred from the rail car to a barge or scow which is propelled by a tugboat. In carfloating service, both the railroad car and its contents are moved about the harbor on a carfloat. The significant differences between the two is that lighterage requires an extra cargo-handling operation by the railroad while carfloat substitutes a waterborne switching movement.

HARBOR LIGHTERAGE OPERATIONS

Lighterage includes both domestic and import-export traffic. In import-export lighterage, the lighter is brought alongside the ocean-going ship and the cargo is transferred from one vessel to the other. Sometimes, the goods shipped are ordinary breakbulk freight, but often there is a heavy concentration of oversized or overweight shipments that have difficulty moving by an all-land rail route.

The Penn Central and Erie Lackawanna Railroads are the only carriers today in the lighterage business. Penn Central import-export lighterage displays an extremely fragmented pattern. The largest freight user of inbound lighterage accounted for less than 9 percent of the 30,000 tons recorded in 1973. The balance of the movement is accounted for by dozens of shipments of three cars per year or less. For freight shipments entering New York City in import-export services, only 6,000 tons were handled by lighterage in 1973. Total Penn Central lighterage is currently at the level of 100 carloads per month. Penn Central contracts for the unloading of cars in New Jersey, then uses its own facilities to float the freight across the harbor.

The Erie Lackawanna does not handle domestic lighterage. It does, however, provide import-export service, and also promotes high-and-wide traffic deliveries to shipside. The high-and-wide loads travel under a different rule, however, and do not appear on the records as lighterage traffic.

TARIFFS

When there were no alternatives to lighterage, it was covered by the line-haul rate; in recent years, the carriers providing lighterage service have been imposing ever-increasing charges to offset the costs. Lighterage tariffs have been increased to the point where the domestic rate is now $21.84 per ton and the import-export rate is $20.69 per ton. Such high rates must be considered prohibitive, and designed to discourage the use of lighter service. These tariffs have been allowed by the Interstate Commerce Commission on the basis of sworn testimony of Penn Central that the rates reflect the true costs of the services.

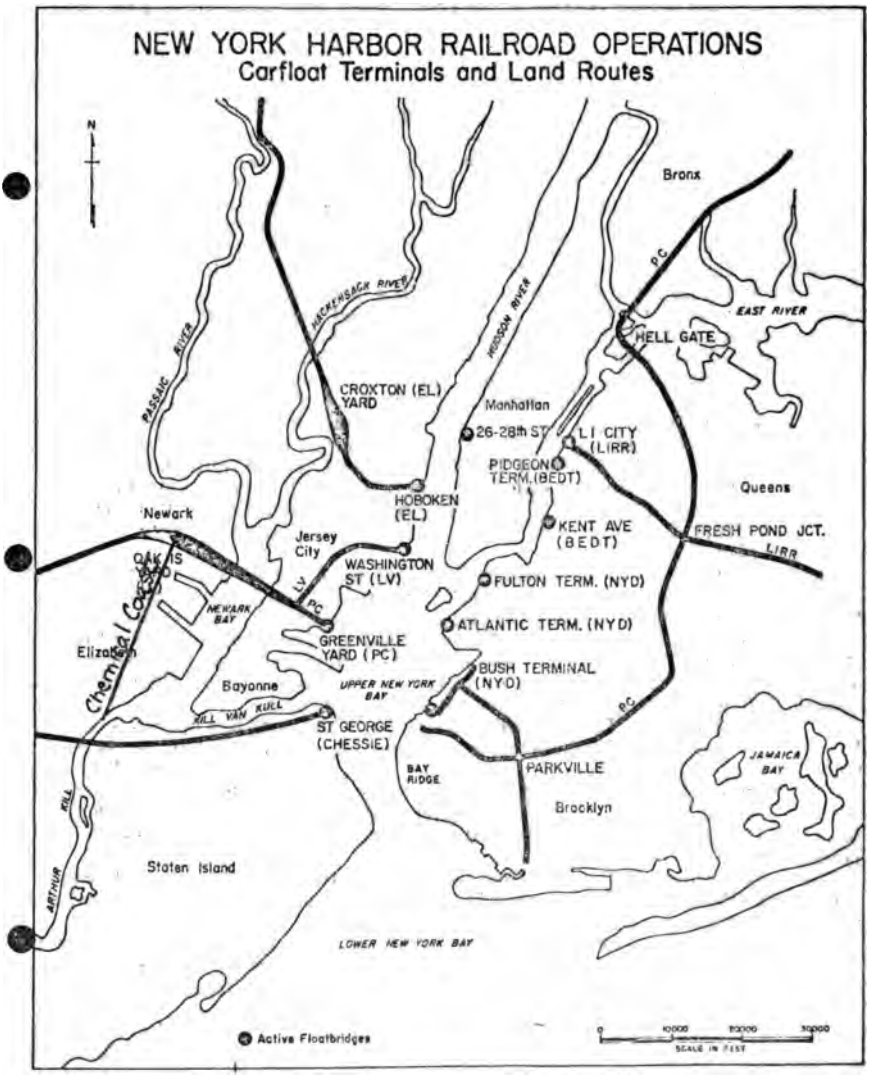
Discussions with locally based Penn Central officers have disclosed that while discouraging the use of lighterage, the railroad has been marketing other services to accommodate the traffic. Where appropriate, freight users have been encouraged to employ the all-rail routes and then to use a motor carrier from the railhead to the freight users' establishment. In other circumstances, the freight users have been encouraged to use trailer on flatcar (TOFC) or other types of container services.

It must be recognized that TOFC service is distinctly different from boxcar/lighterage service. Trailers on flatcars move on different and faster trains and at different tariffs than boxcar traffic. Nominally TOFC tariffs are meant to be competitive with motor carriers tariffs and the railroads strive to provide a service whose speed and convenience are at least as good as a motor carrier. It is likely that if the rail carrier did not provide this service, motor carriers would capture all of the business on a door-to-door basis.

Vessels handling foreign commerce in New York now strive to dock at piers that have direct rail service so that the lighterage charges can be avoided. Several steamship piers in Brooklyn served by the New York Dock Railway have rail service, and at those piers, car-floating can provide direct rail service that avoids the lighterage charges.

While rail lighterage services have been seriously eroded, largely as a result of prohibitive traiffs, provision for lighterage services will be required in the future, especially for oversize and overweight shipments. Lighterage services can be provided by non-railroad private lighterage companies, both steverdoring companies which have the proper equipment, and marine towing companies with barges and scows. However, it is strongly urged that an effort be made by USRA to assure that those industries and steamship piers currently requiring lighterage be provided with service for the handling of special commodities by rail.

CARFLOAT OPERATIONS



New York Harbor carfloat operations represent an entirely different system of waterborne rail services. Both the trunkline railroads and the Brooklyn Terminal Railroads—New York Dock Railway and Brooklyn Eastern District Terminal—

carry on extensive operations in these interline rail services. The attached map depicts the New Jersey floatbridge terminal facilities and the terminal locations in New York Harbor as they exist in 1975.

Penn Central.—Prior to the railroad mergers that began after World War II, the Pennsylvania Railroad relied heavily on carfloating and lighterage across New York Harbor to provide service to New York City and New England. The PRR operated floating services from Harsimus Cove and Greenville in Jersey City to a number of New York City points. Then-existing floatbridges at Bay Ridge, Brooklyn, at Long Island City, Queens and at Oak Point in the Bronx offered water routes for traffic passing through New York City, as well as originating or terminating city traffic.

After the PRR gained control of the Long Island Rail Road about 1900, floating operations between New Jersey and Long Island became more important. Between 1911 and 1917, the Bay Ridge Yards and carfloat facilities were enlarged; after the opening of Hell Gate Bridge, a direct all-land connection between Long Island and the Bronx via Bay Ridge shortened the required route between the PRR and the New York, New Haven and Hartford Railroad.

Floating operations changed after the merger of the New York Central, Pennsylvania and New Haven Railroads into Penn Central. Prior to the merger in 1969, rail routings to the New Haven were via New York Harbor floating facilities (mainly through Bay Ridge) or via interchanges at Maybrook, New York and over the Poughkeepsie Bridge. After the merger, floating was curtailed by the Penn Central, as rail access was provided from Selkirk Yard near Albany south along the east side of the Hudson River to New York City. Carload freight from the west and midwest now moves via the old New York Central water level route to New York City rather than being routed via the former PRR through Pennsylvania and floated across Upper New York Bay.

Carload freight from the southeastern United States continued to be interchanged to Penn Central at Potomac Yard. As these cars move up the eastern seaboard, they are joined by cars from Maryland, Delaware, eastern Pennsylvania and New Jersey. All of this movement could have been retained in float service from Greenville, but the Penn Central elected to handle this traffic overland, via Selkirk. For 1973, about 18,000 cars moved via the route described above to New York City destinations on Penn Central and all destinations on the Long Island Rail Road. The Penn Central is presently providing no float service in New York Harbor on a regular basis, preferring the all-land route for freight service to New York City.

Carfloat operations at Bay Ridge Terminal have ceased and the floatbridges have been completely dismantled. Penn Central has petitioned to abandon floating operations between Greenville and Long Island City. Penn Central has not recently used this float route with its own floating equipment for carload freight. Penn Central contracts for the use of float equipment from other sources for special shipments (height, width or weight restrictions). Erie Lackawanna and Lehigh Valley provide alternative special shipment routes.

Lehigh Valley.—The Lehigh Valley Railroad in the past has operated carfloats from its Jersey City floatbridges to various others in Manhattan, Brooklyn, Queens and the Bronx. Foating operations were quite extensive, as the Lehigh Valley provided its own floating between Jersey City and eleven other terminals with direct rail connections to four carriers. LV discontinued floating operations to Manhattan in 1971 when it stopped service to Pier 46 at Charles Street on the Hudson River.

The only Lehigh Valley floating service operated presently is between the Railroad's Washington Street yard in Jersey City and the Long Island Railroad floatbridge at Long Island City, Queens.

Erie Lackawanna.—Prior to formation of the Erie Lackawanna, the Lackawanna Railroad at Hoboken and the Erie Railroad at Jersey City provided duplicate floating service to Manhattan, Brooklyn, Queens, and the Bronx. After the merger, floating activities were consolidated at Hoboken.

E–L now operates carfloats only to West 28th Street Yard in Manhattan and to the Long Island floatbridge at Long Island City and to shipside at the Brooklyn piers.

Chessie.—Chessie carload freight for Manhattan and Long Island arrives on Staten Island via trains of its subsidiary Staten Island Railroad Corporation. Carfloating from St. George Terminal is performed with Chessie tugs and floats to Pier 66 at West 26th Street and Pier 63 at West 23rd Street, in Manhattan, where several freight forwarders are served.

Central Railroad of New Jersey.—Central Railroad of New Jersey, which served a relatively small market area, operated carfloats from its Communipaw Terminal in Jersey City to eight other locations. Short-haul competition from the trucking industry on the expanding Interstate Highway System, and competition from the larger merged rail carriers reduced the demand for CNJ carfloating services. Since 1973, there has been no CNJ carfloating activity.

Long Island Railroad.—The Long Island Railroad no longer provides tugs or carfloating service. However, their transfer bridges at Long Island City have been continued in service; the Long Island provides a yard switch crew one shift per weekday to handle cars brought to the Long Island Railroad by tugs and carfloats of the Erie Lackawanna and Lehigh Valley Railroads. In 1973, approximately 18,000 carloads of freight originating and terminating on the Long Island Railroad were floated via this arrangement between Long Island City and the two trunkline railroads in New Jersey.

New York Dock Railway.—Before 1900 the New York Dock Company had constructed tracks and facilities along the Brooklyn waterfront in Brooklyn Heights and South Brooklyn. These two locations, still in service, have never been land rail-connected to each other or to any other railroad. Carload freight is floated between New Jersey interchange points and the Fulton Terminal in Brooklyn Heights, the Atlantic Terminal in South Brooklyn and Bush Terminal. Interchange of carloads between the New York Dock and major rail systems is provided by New York Dock carfloats.

In 1972, after the Bush Terminal Railroad abandoned service, New York Dock was authorized to absorb Bush's rail and carfloat services which extended between 28th Street and 58th Street along the waterfront in Brooklyn. At 38th Street and 2nd Avenue, there is still in service an interchange track between the South Brooklyn Railway and the New York Dock Railway.

South of 58th Street, Brooklyn, the former Bush Terminal tracks extended to the Brooklyn Army Terminal tracks. In preparation for an all-land routing of carloads from the New York Dock Railway via Penn Central (Bay Ridge), a new track connection between Penn Central and the New York Dock Railway was constructed. The new connection has not been used because no interchange connection has been arranged. Such connection will require agreement between New York Dock Railway and ConRail.

New York Dock Railway uses its tugs and carfloats to move carloads between its Atlantic, Fulton and Bush Terminals and Hoboken (E–L), Jersey City (LV), Greenville (PC) and Staten Island (B&O). In 1973, New York Dock floated approximately 11,500 carloads of originating and terminating freight in New York City. New York Dock handles both domestic and export-import freight.

Brooklyn Eastern District Terminal (BEDT).—BEDT began operations floating carloads of freight into Brooklyn and Queens in the 1890's. Major rail operations are located at the BEDT Kent Avenue Terminal in Brooklyn. A lesser activity at Pidgeon Street in Long Island City is conducted via a BEDT floatbridge near 54th Avenue and Newtown Creek. A small amount of carload activity takes place in the Brooklyn Navy Yard in connection with materials handled for shipbuilding.

In 1973, 17,400 carloads which originated or terminated in New York City were floated by BEDT. Their float routes for the carloads were between Kent Avenue, Pidgeon Street and Brooklyn Navy Yard, on the east, where there are no rail connections to any other carriers, and Hoboken, Jersey City, Greenville and St. George, on the west, where interchange to major rail carriers is made. All traffic handled by BEDT is domestic freight.

SUMMARY OF PRESENT CARFLOAT OPERATIONS

Brooklyn Eastern District Terminal, New York Dock Railway, Erie Lackawanna and Lehigh Valley routinely operated floats in 1973 for carload freight between either their own rails in the City of New York or the rails of another carrier. In 1973, the Chessie floated cars which were in freight forwarder service between St. George and the west side of Manhattan. The Penn Central continued the Greenville floatbridges in service to accommodate interchange of cars with the BEDT and New York Dock, which supplied their own carfloats and tugs, and to provide for oversized and overweight shipments. No Penn Central floating was performed in 1973 at any of its former floatbridge locations in New York City such as 38th Street and 68th Street in Manhattan or Bronx Terminal Market in the Bronx, except for oversized or overweight shipments not transportable on an all-land route.

In summary, in 1973, carload floating totaled:	Cars
Between New Jersey and Queens-Brooklyn	45,200
Between St. George and Manhattan	3,600
Total	48,800

The figures are carloads originated or terminated in New York City and represent 27 percent of the total 1973 carloads of 181,300 New York City-originated and terminated traffic.

PROPOSED PLAN FOR NEW YORK HARBOR SERVICE

The Joint Agency Committee's proposed plan of operation in New York Harbor encompasses the following:

1. It is apparent that lighterage of rail traffic across New York Harbor has eroded seriously over the years, largely as a result of rapidly escalating tariffs. However, it is essential that a reorganized harbor operating plan adequately provide for the handling of that traffic which is heavily dependent upon lighterage service, traffic which for the most part represents special commodities or requires special handling. In the case of several manufacturing firms, lighterage service has been an important part of the operation of their businesses.

2. The trunkline railroads would no longer be directly involved in carfloat operations across New York Harbor. Actual carfloat operations should be handled by agreements between the Brooklyn Terminal Railroads—New York Dock Railway and the Brooklyn Eastern District Terminal—and the restructured trunkline railroad carriers. Section 206a(4) of the Rail Reorganization Act specifies that a basic goal of the Final System Plan is "the preservation, to the extent consistent with other goals, of existing patterns of service by railroads (including short-line and terminal railroads)." Thus, it is essential that these services and agreements be preserved on existing traffic and that agreements on new traffic that would be assumed by the private and solvent Brooklyn Terminal Railroads be negotiated as between those carriers and the restructured trunkline railroads.

3. The interchange points between the Brooklyn Terminal Railroads and the railroads on the west side of New York Harbor should be consolidated at the Greenville yard in Jersey City, and the interchange with the Chessie System preserved at St. George, Staten Island.

4. The Federal Government, under Section 210 of the Rail Reorganization Act, should provide the financial assistance required to rehabilitate at least three floatbridges at Greenville and the necessary supporting yards for the floating operations.

5. To fully accomplish a viable competitive rail service to and from New York City, it is not only necessary that there be a competitive line connecting the City to the midwest, but also to the south and southwest. More than one-half of the traffic handled by New York Dock Railway in 1974 originated and/or terminated in the south and southwest. Yet, the Preliminary System Plan does not specifically include or recognize the importance of competitive service between New York City and these southern and western origins or destinations. At the present time, the Chessie System operates to New York City from Philadelphia via trackage rights over the Reading and CNJ to its connection with its subsidiary company on Staten Island, the SIRC. A clear expression by USRA of its commitment to continue such operating rights for the Chessie System over trackage which will become part of ConRail should be set forth.

6. Consolidation of all floating activities at the Greenville Yard will also require that the Erie Lackawanna or its successor be provided with access to the consolidated facility. The operations of the Lehigh Valley and Penn Central into Greenville, both to be a part of ConRail, are quite simple and self evident, in that both railroads now utilizes their jointly owned common bridge across Newark Bay to reach their respective floatbridge terminals. Thus, access to the present Penn Central facility is today available and merely involves routing the traffic into the yard supporting the Greenville floatbridge.

All Erie Lackawanna float traffic routes into the northeastern New Jersey area are handled at Croxton Yard. The traffic is then moved to Hoboken for loading at the Erie Lackawanna floating facilities. Routing of this traffic via the Greenville facility will require that it be moved to the proposed Oak Island Consolidated Classification Yard and thence to Greenville.

It is possible to make a movement at this time over existing lines but it involves considerable delay and difficulty, requiring several "back-up" or reverse moves. To eliminate the requirement for these reverse moves, a connection should be constructed at Marion Junction in Jersey City to link traffic from the Croxton Yard to the tracks of the Penn Central over the Hackensack River. From this point, two routes are available for use. The first would utilize existing trackage through the Meadows Yard and onto the Passaic Branch of the Penn Central and into the Oak Island Yard. The second route would utilize the Penn Central Branch extending down the Kearny Peninsula and require construction of a connection to the CNJ that would allow westward movement over the Passaic River into the Brills Yard area. Here, the traffic would again proceed south over CNJ tracks to the vicinity of Oak Island Junction where it could enter Oak Island Yard for further handling to Greenville. The connection at Marion Junction would have other important advantages in connecting the Erie Lackawanna with the Penn Central, particularly in terms of facilitating overall rail competition in this region.

7. The Bay Ridge secondary track in Brooklyn should be rehabilitated for direct service into new waterfront and rail terminal facilities under development by the City of New York in Bay Ridge, including direct connections to the Bush Terminal waterfront area. The modern new rail yard and terminal facilities at Bay Ridge will make it possible to handle substantial container traffic which presently moves through the City of New York by truck. The existing trackage between Parkville and Bay Ridge presently carries sufficient traffic to meet USRA's criteria for inclusion of the line in ConRail, and thus, under the terms of the Rail Reorganization Act, would be eligible for Federal financial assistance. This important route in Brooklyn would be part of an all-land route into the expanding Brooklyn waterfront for traffic and from the north. The floatbridge facilities to be provided in Bay Ridge would also serve as an essential interchange point for New York Dock carfloat traffic across New York Harbor to and from the south and southwest.

8. The Long Island Railroad freight service between the north and northwest and Queens and Long Island should be handled by the all-land route across the refurbished Poughkeepsie Bridge south to New York City via the Oak Point Yard, Hell Gate Bridge and Fresh Pond Junction. For the substantial volume of traffic between Long Island and the south and southwest, it is important that the Long Island Railroad floatbridge facilities at Long Island City be preserved. It is our understanding that the Long Island Railroad is not anxious to continue in the floatbridge operations; this service, representing some 17,000–18,000 cars annually, should be maintained. It is entirely possible that a contractual arrangement between the Long Island and the Brooklyn Eastern District Terminal might be worked out for the actual operations of the Long Island floatbridge facilities.

9. As to the rate structure to be developed between the restructured trunkline railroads and the New York Dock Railway and the Brooklyn Eastern District Terminal for future operations across New York Harbor, this should be a matter of negotiation between those respective operators. On existing traffic, as noted earlier, existing agreements on rates and divisions should be preserved as specified in the Act. In such rate divisions or tariff arrangements that are ultimately worked out on future traffic, it is essential that surcharges not be imposed which would have the adverse effect of discriminating against the New York side of the bi-State Port. Such a system would place the City of New York in a serious position vis-a-vis competition with other Port areas, and should be avoided.

In the Port of New York, the orderly development of commerce and industry and the protection and preservation of existing manufacturing, commercial and rail facilities require the maintenance of the rate parity system. The USRA report recognizes the existence of the past rate parity when it states on page 360:

"Traditionally, rates to the greater New York area have been equalized. This equalization was predicated on the premise that New York City and the eastern New Jersey shoreline were integral parts of a single economic entity."

However, the Preliminary System Plan fails to state the necessity of retaining parity and indeed implies that rate parity in the Port is outmoded. This equalization must be maintained. The Interstate Commerce Commission and the Courts have on numerous occasions recognized the single entity concept and in reliance thereon, the City of New York, the Port Authority and extensive private business and commercial interests have made large investments in port facilities that need to be protected and fostered.

NEW YORK HARBOR FLOATING OPERATIONS CANNOT BE CLASSIFIED AS LIGHT-DENSITY LINES

The Preliminary System Plan states that railroad marine operations, while providing a special service to shippers, has imposed a substantial financial burden on the bankrupt carriers. It appears that this conclusion was based in large part upon the premise that many of the facilities and marine vessels will have to be replaced or rehabilitated and necessary capital expenditures would, therefore, be considerable.

Based upon these assumptions, the USRA has concluded that railroad-marine operations should be analyzed as light-density branch lines. We believe this to be an erroneous approach. It does not properly analyze or understand the importance of the New York Harbor carfloat operations in the nation's rail transportation system. Specifically, the reasons why the light-density branch line analysis is not applicable are:

1. Float operations in 1973 consisted of 48,000 cars or nearly 2,000,000 tons of freight, certainly not a light-density movement.

2. Unlike most light-density lines of 20 to 50 miles in length which frequently serve only a very few or even one shipper, carfloating of some 2 to 8 miles in length handles a wide variety of commodities and services, and represents essential interline rail connections.

3. Marine operations are no more labor intensive than normal railroad operations, usually involving five-man crews.

4. The harbor float operations will be carried out by private solvent railroads under operating agreements. Accordingly, the cost of providing this service will be more properly a revenue division question.

An analysis which will fully reflect the unique nature of this operation is required. The New York State Department of Transportation has extracted information for carfloat traffic which will reveal for the Penn Central, Lehigh Valley and Erie Lackawanna the following:

Carloads by originating territory.

Carloads by originating railroads.

Commodity.

Total revenue per carload.

We believe these data to be most significant. Analysis of the data should permit a full evaluation of the importance to ConRail of the New York Harbor marine operations. These data are being made available to USRA as a supplement to this report.

There are other factors bearing on the nature of these harbor carfloat operations as critical components of the Final System Plan.

Aside from the obvious time and service advantages to the shipper in avoiding cumbersome and circuitous routings via Selkirk, the harbor floating operations have other important economic, social and operational advantages. These floating operations to be performed by private solvent carriers are vital to a large number of domestic industries employing hundreds of people. They also are a critical part of the substantial volume of foreign trade handled in the Port of New York.

The preservation and strengthening of these harbor services permit high and wide loads which cannot be handled by all-land routes to be accommodated in the region. Their preservation is necessary to avoid large diversions to trucks, which would be highly undesirable in the densely developed and congested area of New York City and clearly recognized as a goal in the Act. In addition, they constitute essential emergency routings available when the land routes (such as the present conditions existing on the Poughkeepsie Bridge) are forced to shut down or lack the facilities necessary to handle special commodity loads. Also, the floating of cars to shipside must continue as a form of marine lighterage (floating-in-lieu-of-lighterage to provide rail-to-ship transfer when rail tracks at dockside are not available. Finally, these carfloat services are required to deliver traffic between Manhattan piers and New Jersey and Staten Island railheads for handling by freight forwarders.

Clearly, the harbor operations are a water link in a regional rail system, and cannot be classified as light-density rail lines.

FORECASTS OF FUTURE TRAFFIC

Based on the assumptions in the proposed plan of New York Harbor carfloat service and rehabilitation of the Bay Ridge Secondary Track as discussed above, our Joint Agency Committee has developed traffic projections for the proposed combined water and all-land route operations. The key assumptions are, of course, that the New York Dock Railway and the Brooklyn Eastern District Terminal would perform all floating operations.

NEW YORK DOCK RAILWAY

Table 1 shows the loaded cars handled by New York Dock in 1974 and five-year projections for the period 1975–79. The table does not include some 10,000–15,000 empty cars handled annually. Since New York Dock Railway handles more terminating traffic than it originates, the actual number of cars handled is expected to be far greater than shown in the table—some 45,000 total cars in 1979.

TABLE 1.—NEW YORK DOCK RAILWAY ESTIMATED LOADED CARS 1974–79[1]

Year	Domestic traffic	Chessie	Import-export traffic[2]	Total
1974 (actual)	8,588	----------	2,802	11,390
1975 (projection)	8,588	1,800	3,085	13,473
1976 (projection)	9,447	3,800	3,705	16,950
1977 (projection)	10,392	4,180	5,184	19,756
1978 (projection)	11,432	4,600	7,775	23,807
1979 (projection)	12,575	5,060	12,440	30,075

[1] Excludes potential LIRR float traffic.
[2] Growth relates to marine terminal developments. See table 2.

With respect to domestic traffic, the 1975 projection is conservatively estimated at the 1974 level to take into account the fact that the current business downtown has depressed volumes somewhat in the first quarter of 1975, but that anticipated economic recovery in the second half will result in a total 1975 carload volume equivalent to 1974. The future projections show a modest annual growth as the carrier picks up domestic traffic from the existing trunkline railroad business.

The 1975 and future projections for Chessie traffic are based on the expectation that arrangements between New York Dock and Chessie will be concluded whereby New York Dock will handle this business for the second half of 1975 and in future years.

The export-import carloads handled rose from zero in 1969 to 2800 in 1974. The projected increases in export-import traffic are based on several important factors:

First, revised billing procedures and payment agreements between New York Dock, the stevedoring companies, and the trunkline railroads have resulted in the lifting of an embargo on import-export traffic maintained by New York Dock until October 1973. Import-export traffic has increased and is expected to increase in the future as a result of a renewed interest by New York Dock in capturing this trade.

Second, New York Dock Railway can be expected to handle a major portion of trunkline railroad traffic over the next five years. Brooklyn Eastern District Terminal, on the other hand, handles only domestic traffic and, therefore, would not participate in this traffic in the future.

Third, approximately 30,000 containers of export-import traffic are presently moved from the New Jersey railheads eastbound by truck and 25,000 of these containers go to the Brooklyn waterfront. A new tariff being established by existing railroads for direct TOFC/COFC rail service to the Brooklyn waterfront is expected to result in 2,500 to 3,000 carloads per year handled by New York Dock by 1979.

Fourth, new waterfront development (shipping and industrial and new rail connections to be built along the Brooklyn waterfront will generate substantial new traffic as shown in Table 2 below:

TABLE 2.—BROOKLYN WATERFRONT RAIL OPERATIONS

Project	Construction completed	Rail operating
Port authority piers	None	1976–77 (new trackage).
Hellenic Lines	None	1977.
Moore McCormack (23d St.)	None	1977 (new trackage).
Meat market	1975	1977.
Brooklyn Army terminal	None	1977.
Northeast Marine terminal:		
Phase I	Complete	Complete.
Phase II	1978	1979.
Phase III	Parcel I, 1978	1979.
(Bush terminal)	Parcel II, 1981	1982.
Red Hook containerport	1980	1980.

Thus, it can be seen that a very substantial growth in traffic from 11,390 loaded cars in 1974 to approximately 30,000 in 1979 is conservatively forecasted for the New York Dock Railway, on the assumption that that carrier will handle virtually all trunkline export-import traffic generated by new waterfront development and a significant portion of trunkline domestic freight, as well as the domestic harbor business of the Chessie System.

Approximately 50 to 55 per cent of the carloads handled by New York Dock Railway in 1974 came from the south, southwest and southern midwest. Adding traffic tendered by the Chessie System from the south, it is estimated that 60 to 65 per cent of the carloads handled by the New York Dock Railway will be coming from that area. It is thus assumed that an approximate 60–40 ratio as between marine carfloat operations from Greenville and Staten Island and the proposed overland route, respectively, would prevail through the forecast period.

BROOKLYN EASTERN DISTRICT TERMINAL

BEDT shows projected growth for 1975–79 in Table 3 below. BEDT will not be directly involved in the all-land routing to Bay Ridge and is not expected to participate in export-import traffic. The prime element, therefore, in the growth pattern of this private and profitable carrier, as shown in Table 3, is the domestic traffic that BEDT will likely pick up from the trunkline railroads under the assumed plan of operation.

TABLE 3.—*Brooklyn eastern district terminal (BEDT) estimated loaded cars 1974–79*

1974	18,141
1975	18,150
1976	18,876
1977	19,820
1978	21,207
1979	22,904

It is anticipated that by 1979, the two Brooklyn Terminal Railroads combined, under the assumed operating plan developed in the report, will handle approximately 53,000 loaded freight cars per year, an estimated total tonnage of more than 2,000,000 tons. These figures are exclusive of carfloat traffic to and from the Long Island Railroad. If that service can be maintained under the restructured railroad plan, a total of 70,000 cars annually would be handled in the Port of New York by 1979.

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